

EXHIBIT 2

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO

CASE NO. 5:18-cv-182

MATTHEW DICKSON, on behalf of
himself and others similarly
situated,

Plaintiffs,

vs.

DIRECT ENERGY, LP, et al.,

Defendants.

_____/

Veritext Reporting
37 N. Orange Avenue
Suite 500
Orlando, Florida
Friday, 10:12 a.m.-2:35 p.m.
October 25, 2019

VIDEOTAPED DEPOSITION OF LARRY CORREIA

Taken on Behalf of the Plaintiffs before
Lisa Gerlach, Court Reporter, Notary Public
in and for the State of Florida at Large,
pursuant to Plaintiffs' Notice of Taking
Deposition in the above cause.

<p style="text-align: right;">Page 2</p> <p>1 Appearances:</p> <p>2 Counsel for the Plaintiffs:</p> <p>3 MATTHEW P. McCUE, ESQUIRE</p> <p>4 Law Office of Matthew P. McCue</p> <p>5 1 South Avenue</p> <p>6 Third Floor</p> <p>7 Natick, MA 01760</p> <p>8 508-655-1415</p> <p>9 mmccue@massattorneys.net</p> <p>10 JONATHAN P. MISNY, ESQUIRE</p> <p>11 Murray Murphy Moul + Basil, LLP</p> <p>12 1114 Dublin Road</p> <p>13 Columbus, OH 43215</p> <p>14 614-488-0400</p> <p>15 misny@mmb.com</p> <p>16</p> <p>17 Counsel for the Defendants:</p> <p>18 WILLIAM B. THOMAS, ESQUIRE</p> <p>19 MICHAEL D. MATTHEWS, JR., ESQUIRE</p> <p>20 McDowell Hetherington, LLP</p> <p>21 1001 Fannin Street</p> <p>22 Suite 2700</p> <p>23 Houston, TX 77002</p> <p>24 713-337-5580</p> <p>25 william.thomas@mhllp.com</p> <p>william.thomas@mhllp.com</p> <p>CHRISTINA DILLARD, ESQUIRE</p> <p>(by speakerphone)</p> <p>In-House Counsel, Direct Energy</p>	<p style="text-align: right;">Page 4</p> <p>1 Exhibit 10 Direct Energy 000001 through</p> <p>2 000035 140</p> <p>3 Exhibit 11 TMC 000086 143</p> <p>4 Exhibit 12 Direct Energy 006932 through</p> <p>5 006933 158</p> <p>6 Exhibit 13 Direct Energy 001641 through</p> <p>7 001643 159</p> <p>8 Exhibit 14 Direct Energy 002491 through</p> <p>9 002494 160</p> <p>10 Exhibit 15 Direct Energy 001533 through</p> <p>11 001537 173</p> <p>12</p> <p>13 Exhibit 16 SE 000002 through 000014 175</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: right;">Page 3</p> <p>1 INDEX</p> <p>2 WITNESS EXAMINATION PAGE</p> <p>3 Larry Correia</p> <p>4 Direct by Mr. McCue 6</p> <p>5 Cross by Mr. Thomas 87</p> <p>6 Redirect by Mr. McCue 163</p> <p>7 Recross by Mr. Thomas 173</p> <p>8 Further Redirect by Mr. McCue 175</p> <p>9 Certificate of Oath 179</p> <p>10 Certificate of Reporter 180</p> <p>11 Witness Review Letter 181</p> <p>12 Errata Sheet 182</p> <p>13 EXHIBITS</p> <p>14 Exhibit 1 Subpoena and Notice 29</p> <p>15 Exhibit 2 Direct Energy 001978 29</p> <p>16 Exhibit 3 Direct Energy 001376 and 001379 31</p> <p>17 Exhibit 4 Direct Energy 003493 through</p> <p>18 003498 51</p> <p>19 Exhibit 5 Direct Energy 001016 through</p> <p>20 001027 69</p> <p>21 Exhibit 6 Direct Energy 001872 through</p> <p>22 001881 72</p> <p>23 Exhibit 7 Direct Energy 009021 through</p> <p>24 009025 76</p> <p>25 Exhibit 8 Direct Energy 000047 through</p> <p>000057 84</p> <p>Exhibit 9 TMC 000064 through 000085 116</p>	<p style="text-align: right;">Page 5</p> <p>1 THE VIDEOGRAPHER: Good morning. We are</p> <p>2 going on the record at 10:12 a.m. on</p> <p>3 October 25th, 2019. Please note that the</p> <p>4 microphones are sensitive and may pick up</p> <p>5 whispering, private conversations, and</p> <p>6 cellular interference. Please turn off all</p> <p>7 cell phones or place them away from the</p> <p>8 microphones, as they can interfere with the</p> <p>9 deposition audio. Audio and video recording</p> <p>10 will continue to take place unless all</p> <p>11 parties agree to go off the record.</p> <p>12 This is media unit one of the</p> <p>13 video-recorded deposition of Larry Correia,</p> <p>14 taken by counsel for the plaintiff, in the</p> <p>15 matter of Matthew Dickson vs. Direct Energy,</p> <p>16 LP, et al, filed in the United States</p> <p>17 District Court, Northern District of Ohio.</p> <p>18 This deposition is being held at Veritext</p> <p>19 Orlando, located at 37 North Orange Avenue,</p> <p>20 Orlando, Florida. My name is Bailey Gerlach,</p> <p>21 from the firm Veritext Legal Solutions, and</p> <p>22 I'm the videographer. The court reporter is</p> <p>23 Lisa Gerlach, from the firm Veritext</p> <p>24 Reporting.</p> <p>25 Counsel and all present in the room and</p>

<p style="text-align: right;">Page 6</p> <p>1 everyone attending remotely will now state 2 their appearance and affiliation for the 3 record, beginning with the noticing attorney. 4 MR. McCUE: Matthew McCue for the 5 plaintiffs. 6 MR. THOMAS: Will Thomas and Matt 7 Matthews from McDowell Hetherington, 8 representing Direct Energy. Participating by 9 phone today is Christina Dillard. 10 MR. MISNY: And also, Jonathan Misny, for 11 the plaintiff. 12 THE VIDEOGRAPHER: Will the court 13 reporter, please, swear in the witness? 14 THEREUPON, 15 LARRY CORREIA, 16 A Witness herein, acknowledged after having 17 been duly sworn and testified upon his oath as 18 follows: 19 THE WITNESS: Yes. 20 DIRECT EXAMINATION 21 BY MR. McCUE: 22 Q. Mr. Correia, my name is Matthew McCue. I 23 represent the plaintiffs in this case. I'll be taking 24 your deposition today. Mr. Thomas, who represents 25 Direct Energy, will also be asking you some questions.</p>	<p style="text-align: right;">Page 8</p> <p>1 A. (Nods head.) 2 Q. So one thing about depositions -- and I 3 notice how we're communicating -- everything is on the 4 record. So you need to respond verbally. The court 5 reporter can't take down head nods. 6 Okay? 7 A. Okay. 8 Q. If it's a no, say "no." If it's a yes, say 9 "yes." We try to avoid methods of communication that 10 kind of are neutral when it's on a transcript. We 11 also have a videographer here today. Okay? 12 During the course of a deposition, counsel 13 might object to the way I ask a question. That's kind 14 of part -- they're preserving the record for the 15 trial, so that's fine. 16 But if, at any point, you don't understand my 17 question, I would just ask you to just stop and say, 18 "I don't understand." I'll try to clarify. All 19 right? 20 The idea of today is, this is really an 21 interview. We're trying to figure out facts. It's a 22 fact-gathering process, so we want to make sure we're 23 communicating clearly. 24 Is that fair? 25 A. Yes.</p>
<p style="text-align: right;">Page 7</p> <p>1 If, at any time during the course of the day, 2 you need to take a break, please let us know. We'll 3 be happy to do that. 4 Can you confirm you're not going to be 5 represented today by counsel; is that correct? 6 A. That's correct. 7 Q. So then I will kind of advise you just a tiny 8 bit about your rights to read and sign the deposition. 9 So what the rule essentially provides is, a witness 10 has an opportunity to read the transcript that the 11 court reporter is putting down and make any 12 typographical corrections or any corrections that you 13 need to make on it, and you have 30 days to do that. 14 Or you can waive that. It's called waiving the 15 signature. 16 So you don't need to make a decision right 17 now, unless you're ready. But, at the end of the day, 18 I'll be asking you how you want to handle 19 post-deposition logistics -- do you want to waive or 20 do you want to read and sign? 21 If you want to read and sign, we will send 22 you a copy of the transcript. You can make 23 corrections and send it back to us. But if you don't 24 get it back to us within 30 days, it's deemed waived. 25 Okay? Is that fair?</p>	<p style="text-align: right;">Page 9</p> <p>1 Q. Can you tell me a little bit about yourself, 2 where you went to high school or college, and a little 3 bit about your employment background? 4 A. I went to college at UCF. I was in the 5 military. I've been working for Total Marketing 6 Concepts now for 13 years. 7 Q. Okay. Where did you serve in the military? 8 A. I was in the Army and I was stationed in 9 Hawaii. 10 Q. For how long were you in the service for? 11 A. I was in the service for about three years. 12 Q. I think I forgot to even ask you to state 13 your full name for the record. 14 A. It's Lawrence Leslie Correia. 15 Q. Where do you work currently? 16 A. Total Marketing Concepts. 17 Q. What is their business address? 18 A. 1043 Upsala Drive or Road -- I always get 19 that mixed up -- Sanford, Florida 32771. 20 Q. How many years now have you worked for TMC? 21 A. This is now my 13th year. 22 Q. Could you walk us through your different jobs 23 generally beginning 13 years ago? Essentially, your 24 career progression at TMC, if you can summarize that 25 for us?</p>

<p style="text-align: right;">Page 10</p> <p>1 A. Sure. I joined TMC as a telecommunications 2 manager. I was brought in to manage an AT&T campaign. 3 Prior to my tenure there, they didn't really do a lot 4 of energy campaigns, and that was my specialty. 5 I joined as a manager, bringing in a 6 campaign, and grew from just a manager of that single 7 campaign to bringing in other telecommunications 8 programs. Ended up growing that entire division and 9 just worked my way through the company to general 10 manager, operations manager. As of right now, I'm the 11 business development manager, or director of business 12 development. 13 Q. For how long have you had the title of 14 director of business development? 15 A. It's about three months now. 16 Q. What was your title before that time? 17 A. I was a senior franchise manager for the past 18 few years. 19 Q. Let's kind of put a cabin on it. This case 20 is really about telemarketing that happened within the 21 last three or four years. 22 So focusing on that timeframe, what was your 23 job title during those years? 24 A. I was a senior manager. At one point, I was 25 an operations manager, but the day-to-day running of</p>	<p style="text-align: right;">Page 12</p> <p>1 Angela Preston, Amara Williams, Marissa Weed. 2 I was responsible for the home services 3 portion of the Direct Energy portfolio. And my -- as 4 a senior manager, I initially launched the Direct 5 Energy program with home services. The energy stuff 6 was really Robert Svendsen and his downline. 7 Q. What category would you place ringless 8 voicemail telemarketing? Does that fall into the home 9 service area? 10 A. That falls completely under energy -- 11 deregulated energy sales. We didn't do any ringless 12 voicemail for home services. Home services is an 13 inbound campaign where we receive calls. 14 Q. Okay. What was your role with ringless 15 voicemail telemarketing at Direct Energy? 16 A. I negotiated the contract with Direct Energy 17 on behalf of TMC when we launched the campaign. I was 18 responsible for launching a lot of campaigns, so that 19 was pretty normal where I would deal with the Direct 20 Energy procurement team, Lauren -- and I can't 21 remember everyone from over there -- Brian Cain 22 originally. Unfortunately, he passed away. 23 Q. Okay. We'll get into some more detail later. 24 Just keeping it general for now. 25 What is your understanding of this lawsuit,</p>
<p style="text-align: right;">Page 11</p> <p>1 all the sales campaigns and things of that nature, 2 that really fell to Robert Svendsen over the past, you 3 know, five, six years or so, since I left Longwood. 4 In Longwood, I was the general manager and 5 had autonomy over everything. When I moved to 6 Sanford, I was rolled up under the existing executive 7 structure there. That was -- Robert Svendsen was my 8 direct report, and then George Lonabaugh. 9 Q. So this case is about ringless voicemail 10 telemarketing. 11 Are you aware of that generally? 12 A. Yes, I am. 13 Q. Okay. During the time that TMC did ringless 14 voicemail telemarketing for Direct Energy, who was 15 your immediate supervisor? 16 A. That was Robert Svendsen. 17 Q. And who would be above Robert Svendsen? 18 A. That would be Tyson Chavarie -- I think was 19 the vice-president. People wore a lot of different 20 hats at the time. But, ultimately, it would be Robert 21 Svendsen, Tyson Chavarie, and George Lonabaugh who 22 were the upline for me. 23 Q. During the same timeframe, who reported to 24 you as a direct report? 25 A. The people that reported directly to me were</p>	<p style="text-align: right;">Page 13</p> <p>1 of what it's about? 2 A. My understanding of the lawsuit, from what I 3 gathered, is that someone received calls that they 4 didn't authorize, or they may have been on the DNC 5 list and they were marketed. I think that's the 6 extent of my knowledge of the particulars of this 7 case. I know it's a class action lawsuit now. 8 Q. Sure. What is your general understanding of 9 what is the Telephone Consumer Protection Act? 10 A. The TCPA Act protects consumers' rights and 11 it stipulates how a call center should be conducting 12 itself in the way of how it procures leads, how it 13 handles those leads; and, you know, it's basically 14 everything -- the laws that govern contact centers. 15 Q. Did you have some personal training or 16 education in the TCPA or in telemarketing rules in 17 general? 18 A. We had some general training. I think most 19 of that was handled by legal counsel. That's all 20 stuff that fell under Patrick Crocker and senior 21 management. At my level, I was not responsible for 22 compliance or procurement of leads or anything of that 23 nature. 24 Q. Okay. There's been some confusion about -- 25 who does Patrick Crocker represent? Did he represent</p>

<p style="text-align: right;">Page 14</p> <p>1 TMC or did he represent Silverman?</p> <p>2 A. I'm not quite sure of the particulars of him</p> <p>3 and Silverman. I know Silverman was part of the</p> <p>4 contract for the procurement of leads. Somehow -- I</p> <p>5 don't know what his involvement with that was. But my</p> <p>6 understanding of Silverman is, they were the lead</p> <p>7 provider at one time. Patrick, from my understanding,</p> <p>8 was our legal counsel -- was TMC's legal counsel.</p> <p>9 Q. Okay. I understand.</p> <p>10 What is TMC? How would you describe what</p> <p>11 your company does?</p> <p>12 A. TMC is a technology-driven contact center.</p> <p>13 We specialize in market research, sales, customer</p> <p>14 service.</p> <p>15 Q. Telemarketing?</p> <p>16 A. Yes; telemarketing is one component.</p> <p>17 Q. What is ringless voicemail marketing?</p> <p>18 A. Ringless voicemail -- I'm not an IT guy, so I</p> <p>19 can't speak to the particulars of it. But my</p> <p>20 understanding of the technology is that it allows you</p> <p>21 to deliver a message to a customer without ringing</p> <p>22 their phone, without actually having them -- from</p> <p>23 hearing their phone ring. So they would just get a</p> <p>24 message, I guess.</p> <p>25 Q. Do you know how TMC first learned about</p>	<p style="text-align: right;">Page 16</p> <p>1 named DMI. DMI is very well-respected for their</p> <p>2 opt-in traffic. And we went a second layer to provide</p> <p>3 TrustedForm data.</p> <p>4 So the contract that I helped put together</p> <p>5 was, I believed at that time, a solid contract. And</p> <p>6 we shot it past Direct Energy's legal team, and it</p> <p>7 satisfied all of the requirements at the time.</p> <p>8 So we had leads where customers were opting</p> <p>9 in, and we had Verisign data or TrustedForm -- I can't</p> <p>10 remember -- it's a lot of stuff. I think it's</p> <p>11 TrustedForm.</p> <p>12 TrustedForm would capture whatever -- this is</p> <p>13 all stuff that was being told to me by our IT team</p> <p>14 that these are things that we could do and were doing.</p> <p>15 And that's how I negotiated the contract with Direct</p> <p>16 Energy.</p> <p>17 Q. Sure. So the first -- I think the earliest</p> <p>18 -- one of the earlier contracts between TMC and Direct</p> <p>19 Energy specifically refers to DMI, opt-in leads, and</p> <p>20 exactly what they should look like?</p> <p>21 A. Correct.</p> <p>22 Q. Is it your understanding that, at any time</p> <p>23 when TMC did ringless voicemail telemarketing for</p> <p>24 Direct Energy -- at all times, were opt-in leads used?</p> <p>25 A. That's outside of my knowledge. I negotiated</p>
<p style="text-align: right;">Page 15</p> <p>1 ringless voicemail marketing?</p> <p>2 A. That's something that's been a part of the</p> <p>3 industry. It was introduced to us by -- wow -- I</p> <p>4 can't remember the gentleman's name. I would have to</p> <p>5 think about that. But it's a gentleman out of Texas.</p> <p>6 I can't remember the name of the company. But he</p> <p>7 introduced us to the concept of it.</p> <p>8 Q. Do you understand from your experience that</p> <p>9 there's controversy about this -- this ringless</p> <p>10 voicemail is subject to the TCPA? Are you generally</p> <p>11 familiar with that question?</p> <p>12 A. Sitting here, yes, I'm aware of it now.</p> <p>13 Q. Even not sitting here, but over the years,</p> <p>14 between TMC and Direct Energy, there was a lot of back</p> <p>15 and forth about the technology and is it subject to</p> <p>16 the TCP or not.</p> <p>17 Do you recall that general discussion going</p> <p>18 back and forth between TMC and Direct Energy?</p> <p>19 A. Yes. Direct Energy wanted to make sure that</p> <p>20 we were fully compliant with the TCPA rules. And the</p> <p>21 way that we structured the deal with Lauren is based</p> <p>22 on opt-in data, where customers were opting in to</p> <p>23 being marketed, versus just random leads.</p> <p>24 So the system that I negotiated with Lauren</p> <p>25 was that we would procure the leads from a company</p>	<p style="text-align: right;">Page 17</p> <p>1 the contract, but I was not responsible for the</p> <p>2 day-to-day operations of that campaign.</p> <p>3 Q. Okay.</p> <p>4 A. So, once again, that fell to Robert Svendsen</p> <p>5 and his team of managers -- Daniel Bettis and Teddy</p> <p>6 Smith and whomever else was managing that team.</p> <p>7 Like I said, I was responsible for home</p> <p>8 services, and I learned about things, like, at</p> <p>9 quarterly business reviews, where I would sit next to</p> <p>10 John Moran and other guys from Direct Energy, and</p> <p>11 that's how I kind of learned about things. But I</p> <p>12 wasn't privy to a lot of things that were going on at</p> <p>13 TMC.</p> <p>14 Q. Okay. Do you realize you're on a lot of</p> <p>15 e-mails between you and John Moran over the years,</p> <p>16 talking about RVM -- ringless voicemail -- do you</p> <p>17 recall that happening generally?</p> <p>18 A. Yeah.</p> <p>19 Q. Do you have knowledge that at some point --</p> <p>20 let's cabin a few things.</p> <p>21 When did TMC start doing ringless voicemail</p> <p>22 telemarketing for Direct Energy?</p> <p>23 A. I can't remember the date off the top of my</p> <p>24 head. I would have to think probably somewhere around</p> <p>25 2017, maybe.</p>

<p style="text-align: right;">Page 18</p> <p>1 Q. I promise only to take you through a document 2 when we have to. 3 A. Sure. 4 Q. Sometimes we need to refresh memory and 5 things like that, so that's fine. 6 So we're at Document 12. Mr. Correia, if you 7 would just take a moment and look through that e-mail. 8 But, for the record, I'm referring to a document 9 produced by Direct Energy and it's at Bates 001978, 10 and it's an e-mail correspondence from Mr. Correia to 11 Mr. Moran, regarding ringless SOW. 12 Let me know when you've had a chance to look 13 at that. 14 A. Yeah, I'm looking at this e-mail. 15 Q. So this e-mail, halfway down, we're trying to 16 get a -- cabin the date on when the ringless voicemail 17 telemarketing began. There's a discussion here where 18 you're referring to the program starting back in 19 September of 2016 -- would be the context from the 20 e-mail. 21 Do you agree with that? 22 A. This e-mail is dated March 2017. 23 Q. Sure. And then the language of the e-mail, 24 Mr. Moran is asking you -- to Mr. Correia -- "Did you 25 submit an amendment to the SOW," and the subject is</p>	<p style="text-align: right;">Page 20</p> <p>1 A. Who did the RVM? 2 Q. Right. Who actually did the physical 3 transmission of the RVM telemarketing calls? 4 A. Wow. I think the gentleman's name is Alan 5 or -- that's the name we know, or I know. I can't 6 remember the gentleman that referred him to us. David 7 Hjorth -- H-J-O-R-T-H -- David Hjorth was the 8 gentleman that originally provided the RVM, I believe. 9 Q. The original RVM kind of dialing platform? 10 A. Yeah. 11 Q. I understand. Thank you. 12 Who in your memory would be the person with 13 the most knowledge from TMC about the relationship 14 with Direct Energy specific to RVM telemarketing? 15 A. That would probably be Robert Svendsen. 16 Q. And what was his title? I apologize if I 17 already asked you. 18 A. He was the director of operations. 19 Q. Is he still the director of operations? 20 A. No. He's no longer employed at TMC. 21 Q. Do you know roughly where he currently 22 resides? 23 A. He resides in Polk County, I believe, or Lake 24 County, but he works for a company in Fort Lauderdale 25 now.</p>
<p style="text-align: right;">Page 19</p> <p>1 "ringless SOW" -- "for this program back in September 2 when it first launched?" 3 Do you see that? 4 A. Yeah. 5 Q. That's what I'm referring to. 6 A. So, I guess, it was 2016 when it launched, 7 instead of 2017. 8 Q. And when did it stop? 9 A. I have no idea. 10 Q. Do you know what dialing company TMC used for 11 ringless voicemail technology, say, back in September 12 of 2016? 13 A. I heard a couple names. I can't -- like I 14 said, I was not involved with anything with those 15 customers. I heard the name JDI. 16 Q. Okay. 17 A. I don't know -- that's the only one I can 18 think of. 19 Q. Sure. Let me try to help refresh your 20 memory. So we have call records from JDI that seem to 21 tie to Silverman that go from June, roughly, in 2017 22 through June of 2018. So we have those records from 23 that period of time. 24 What I'm trying to figure out is, who was the 25 dial-in before that period of time. Would you know?</p>	<p style="text-align: right;">Page 21</p> <p>1 Q. Do you know who that company is if I was 2 trying to find them? 3 A. I know it's called -- it's ECCO -- is the 4 acronym for the company. ECCO. 5 Q. When TMC was doing ringless voicemail 6 telemarketing for Direct Energy, did it do ringless 7 voicemail telemarketing for any other clients? 8 A. I believe they also did energy for Spark. I 9 don't know if they did ringless voicemail for Spark, 10 but I know they marketed for Spark Energy as well. 11 Q. Okay. So, internally, when TMC is 12 telemarketing for two different clients that are in 13 the energy space, how do they keep the records 14 separate? 15 A. I have no idea. I do know, on the front-end, 16 that, when we're negotiating contracts, that is 17 something that most clients are sensitive to -- you 18 know -- the overlap in markets. That's something 19 that -- you know -- we, to my knowledge, never did, 20 where we were in the same market at the same time. 21 But, once again, the day-to-day management of 22 energy did not fall under me. 23 Q. Okay. I noticed in the contract -- and I can 24 show you if we need -- there's a reference -- or it 25 says -- a "do not compete" clause that says, "If TMC</p>

<p style="text-align: right;">Page 22</p> <p>1 is telemarketing for Direct Energy, they can't use the</p> <p>2 same lists for any other client in the same space."</p> <p>3 Does that make sense to you? Are you</p> <p>4 familiar with that type of --</p> <p>5 A. I'm familiar with that type of clause.</p> <p>6 Q. If TMC is doing telemarketing for Direct</p> <p>7 Energy and Spark at the same time, Direct Energy would</p> <p>8 use -- if they had a list -- they would only use that</p> <p>9 list for Direct Energy, and they would not use that</p> <p>10 list for Spark.</p> <p>11 Does that make sense?</p> <p>12 A. Yeah, that makes sense.</p> <p>13 Q. Is that consistent with your experience about</p> <p>14 how things actually happen?</p> <p>15 A. Yes, that's consistent.</p> <p>16 Q. What is Silverman? What do they do?</p> <p>17 A. Silverman was introduced to me by George and</p> <p>18 Robert as a lead vendor or a lead broker. So they</p> <p>19 became, in essence -- instead of using David Hjorth</p> <p>20 and JDI, they started using Silverman.</p> <p>21 Q. Okay.</p> <p>22 A. That's how, I believe -- once again, you</p> <p>23 know, I'm just trying to piece together things.</p> <p>24 Q. All you can do is tell us your perspective on</p> <p>25 this.</p>	<p style="text-align: right;">Page 24</p> <p>1 Q. When you say "leads," are they all opt-in</p> <p>2 leads?</p> <p>3 A. They're -- some are opt-in leads and some are</p> <p>4 just cold-call leads that need to be ran through TMC</p> <p>5 scrubs and stuff like that.</p> <p>6 Q. But the RVM campaigns that TMC did for Direct</p> <p>7 Energy all used opt-ins; is that correct?</p> <p>8 A. Correct.</p> <p>9 Q. So who would be the different vendors for</p> <p>10 opt-in leads that were used for the ringless voicemail</p> <p>11 campaigns?</p> <p>12 A. When I negotiated it, it was DMI. DMI was</p> <p>13 the vendor that I negotiated, and DMI was the company</p> <p>14 that we were using while I was involved in the</p> <p>15 campaign.</p> <p>16 Q. At some point, did TMC stop using DMI for</p> <p>17 opt-in leads and use somebody else?</p> <p>18 A. Yes, I believe so. They ended up using</p> <p>19 Silverman, as you said.</p> <p>20 Q. Okay. Was there a transition during those</p> <p>21 times? Like, I've seen Fluent mentioned. You</p> <p>22 mentioned Brightbox.</p> <p>23 But focusing specifically on opt-in leads,</p> <p>24 what were the other vendors that were used?</p> <p>25 A. I have no idea. That's a question that's for</p>
<p style="text-align: right;">Page 23</p> <p>1 Was there any type of ownership overlap</p> <p>2 between TMC and Silverman?</p> <p>3 A. Not that I'm aware of, other than the</p> <p>4 relationship with Patrick Crocker.</p> <p>5 Q. His wife works at Silverman?</p> <p>6 A. I believe so. I believe his wife is somehow</p> <p>7 tied to Silverman.</p> <p>8 Q. I notice from the documents that Silverman</p> <p>9 was both kind of doing the ringless voicemail and was</p> <p>10 also sourcing opt-in leads.</p> <p>11 Is that consistent with your memory?</p> <p>12 A. Once again, that is not something that I was</p> <p>13 involved in. I was client-facing.</p> <p>14 But you'd have to understand the way that TMC</p> <p>15 was structured at the time. There wasn't a lot of</p> <p>16 transparency and there wasn't a lot of -- there wasn't</p> <p>17 a lot of meetings with the guys that ran stuff. So...</p> <p>18 Q. Sure. Okay. What other vendors did TMC use</p> <p>19 to get opt-in leads besides DMI?</p> <p>20 A. I believe they used Brightbox.</p> <p>21 Q. Anybody else?</p> <p>22 A. We've used a lot of vendors for leads, so I</p> <p>23 don't know which lead vendors they used specifically</p> <p>24 for RVM leads. But I can tell you vendors that we've</p> <p>25 used for leads in the past that I know of.</p>	<p style="text-align: right;">Page 25</p> <p>1 Tyson Chavarie. Tyson Chavarie became the point for</p> <p>2 all of that -- Tyson Chavarie and Joe Yates. Those</p> <p>3 guys in IT really control the leads, the purchasing of</p> <p>4 the leads, the vendors. Like, they took control of</p> <p>5 it, and I was off doing something else.</p> <p>6 Q. I understand.</p> <p>7 A. That was not within my purview.</p> <p>8 Q. Sure. So I see in the contracts that there</p> <p>9 is a specific opt-in contract regarding DMI.</p> <p>10 Are you familiar with that contract?</p> <p>11 A. Yes. That's the contract that I negotiated.</p> <p>12 Q. But I don't see contracts specific to</p> <p>13 Brightbox or Fluent or any other opt-in leads that you</p> <p>14 mentioned.</p> <p>15 A. I was not responsible for that at that time.</p> <p>16 Q. Do you know, was TMC required to get specific</p> <p>17 contractual authority or permission from Direct Energy</p> <p>18 to use specific opt-in vendors or did they have</p> <p>19 discretion?</p> <p>20 A. When I was dealing with Direct Energy, it was</p> <p>21 my understanding that everything needed to be approved</p> <p>22 by DE. So any vendor that I brought on, I received</p> <p>23 approval from John Moran or whomever it was for that</p> <p>24 on-boarding process. So it was my understanding that,</p> <p>25 if any changes were being made to the campaign, they</p>

<p style="text-align: right;">Page 26</p> <p>1 had to be vetted.</p> <p>2 Q. Okay. So if they're using Fluent, there</p> <p>3 should be a specific contract where Direct Energy is</p> <p>4 allowing Fluent to do opt-ins?</p> <p>5 MR. THOMAS: Object. It's vague as to</p> <p>6 "they."</p> <p>7 BY MR. McCUE:</p> <p>8 Q. Sorry. If TMC is using Fluent opt-in leads,</p> <p>9 then it's your testimony that there should be a</p> <p>10 specific contract where Direct Energy is approving</p> <p>11 Fluent as an opt-in vendor?</p> <p>12 A. Based on my experience dealing with Direct</p> <p>13 Energy and how they structure their business, I would</p> <p>14 say yes.</p> <p>15 Q. At some point, Silverman was approved for</p> <p>16 opt-in leads; is that right?</p> <p>17 A. Correct.</p> <p>18 Q. Were you involved in that at all?</p> <p>19 A. I believe I was involved in the paperwork,</p> <p>20 yes.</p> <p>21 Q. Okay. Did Direct Energy ever specifically</p> <p>22 authorize TMC to engage in ringless voicemail</p> <p>23 telemarketing?</p> <p>24 A. Yes. You know, it's my understanding that --</p> <p>25 you know -- based on that contract that we negotiated</p>	<p style="text-align: right;">Page 28</p> <p>1 know, sends that back and says, "Hey, there's the</p> <p>2 thing."</p> <p>3 And we did not do any ringless voicemail for</p> <p>4 Direct Energy prior -- or anyone else -- prior to that</p> <p>5 approval. Like, we didn't -- to my knowledge, we were</p> <p>6 not RVM-ing anyone until that contract came back from</p> <p>7 DE saying that we could. That was my understanding.</p> <p>8 Q. All right. Do you recall getting e-mails</p> <p>9 from John Moran where he's saying, "Ringless voicemail</p> <p>10 is a green light"? Do you recall those types of</p> <p>11 e-mails?</p> <p>12 A. Yes.</p> <p>13 Q. Just bear with me one second.</p> <p>14 MR. THOMAS: Matt, do we want to mark the</p> <p>15 1978 as an exhibit -- the last document you</p> <p>16 showed him?</p> <p>17 MR. McCUE: I prefer to just have it in</p> <p>18 the record by the Bates. Is there a reason</p> <p>19 why you want to mark it? I'm happy to hear</p> <p>20 that. I just think, if we do it by the</p> <p>21 Bates, you'll know what it is.</p> <p>22 MR. THOMAS: Can we just mark it by the</p> <p>23 exhibit?</p> <p>24 MR. McCUE: Okay. Why don't we mark the</p> <p>25 first document -- well, first, let's mark the</p>
<p style="text-align: right;">Page 27</p> <p>1 with Lauren, that they gave us approval for conducting</p> <p>2 RVM based on how I outlined it in that contract.</p> <p>3 Q. And this is what I'm trying to understand.</p> <p>4 There's a lot of e-mails -- I can show you the</p> <p>5 documents -- where you're sending over to Moran an</p> <p>6 SOW -- a statement of work -- specific for ringless</p> <p>7 voicemail, and it starts in March of 2017. You're</p> <p>8 sending over a specific contract. And over and over</p> <p>9 again, you're sending the contract that TMC has</p> <p>10 signed, but Direct Energy never signs it, until</p> <p>11 roughly December of 2017.</p> <p>12 Does that refresh your memory about that</p> <p>13 going back and forth? If not, I can show you some</p> <p>14 documents.</p> <p>15 MR. THOMAS: I object. I think that</p> <p>16 assumes some facts not in evidence. It may</p> <p>17 be more beneficial to show him the documents.</p> <p>18 A. Yeah. You would have to refresh my memory.</p> <p>19 This is a long time ago.</p> <p>20 BY MR. McCUE:</p> <p>21 Q. Understood. Do you recall when Direct Energy</p> <p>22 signed a contract authorizing ringless voicemail</p> <p>23 technology through Silverman?</p> <p>24 A. No, I don't. I don't recall the specific</p> <p>25 date, but there should be e-mails where Lauren, you</p>	<p style="text-align: right;">Page 29</p> <p>1 depo notice as Exhibit 1, and we'll mark</p> <p>2 1978, which is binder document 12 -- we'll</p> <p>3 mark that as Exhibit 2.</p> <p>4 (Exhibits 1 and 2 were marked for</p> <p>5 identification.)</p> <p>6 BY MR. McCUE:</p> <p>7 Q. If you could turn to binder document 13?</p> <p>8 Just take a moment to look at this document, the first</p> <p>9 page and the second page.</p> <p>10 A. Okay.</p> <p>11 Q. So referencing the document Bates-stamped</p> <p>12 Direct Energy 001376, and the next one is Direct</p> <p>13 Energy 001379, it looks like an e-mail to you from</p> <p>14 George, dated March 23, 2017.</p> <p>15 Is that correct at the top here?</p> <p>16 A. This is an e-mail, actually, from George to</p> <p>17 me. So this is a document where George is forwarding</p> <p>18 the signed -- I guess this is an addendum --</p> <p>19 Q. Yeah.</p> <p>20 A. -- to me. Yes.</p> <p>21 Q. Okay. But it's not signed by George; right?</p> <p>22 It's signed by -- when you say George -- I'm sorry --</p> <p>23 is that George Lonabaugh?</p> <p>24 A. That's George Lonabaugh.</p> <p>25 Q. So Bates 001379, this is a statement of work</p>

<p style="text-align: right;">Page 30</p> <p>1 addendum for ringless voicemail telemarketing?</p> <p>2 A. Correct. Signed by George Lonabaugh,</p> <p>3 forwarded to me on the 23rd, which I sent to John</p> <p>4 Moran later that day.</p> <p>5 Q. Okay. Was it your understanding that this</p> <p>6 program was approved right around that time or was it</p> <p>7 approved at some later time?</p> <p>8 A. I believe that it was approved somewhere</p> <p>9 around this time for this addendum. I think this</p> <p>10 addendum is just changing it to Silverman.</p> <p>11 Q. Okay.</p> <p>12 A. But prior to that, we had approval to do RVM</p> <p>13 with DMI.</p> <p>14 Q. Okay. Referring back to Bates 1379, is this</p> <p>15 an accurate summation of your understanding of the</p> <p>16 terms of the agreement between TMC and Direct Energy</p> <p>17 about ringless voicemail telemarketing?</p> <p>18 A. At that time, yeah, I believe so. This, I</p> <p>19 believe, was, like, the last interaction that I really</p> <p>20 had with this sort of paperwork.</p> <p>21 You have to understand that, you know, prior</p> <p>22 to that, I had more of an interaction with Direct</p> <p>23 Energy. I was kind of pulled away from a lot of</p> <p>24 things.</p> <p>25 During this time, I was in charge of</p>	<p style="text-align: right;">Page 32</p> <p>1 Q. Would you agree with me that this is an</p> <p>2 e-mail from John Moran to the team, and the team</p> <p>3 copies yourself and George Lonabaugh, and it refers to</p> <p>4 the ringless voicemail campaign and is giving TMC the</p> <p>5 green light to go forward with the ringless voice</p> <p>6 message program to opt-in leads only?</p> <p>7 A. Correct.</p> <p>8 Q. So if the contract wasn't physically signed</p> <p>9 for sometime after March, as of May 15, 2017, TMC has</p> <p>10 the green light to go forward with this program; is</p> <p>11 that correct?</p> <p>12 A. Yeah, I assume so.</p> <p>13 Q. Okay. So it seems that, at all times, TMC</p> <p>14 acted with Direct Energy's specific authorization.</p> <p>15 Would you agree with that?</p> <p>16 A. Yes.</p> <p>17 MR. THOMAS: Object. I think that may</p> <p>18 call for a legal conclusion; vague,</p> <p>19 ambiguous.</p> <p>20 MR. McCUE: That's fine.</p> <p>21 BY MR. McCUE:</p> <p>22 Q. In your understanding, working for TMC, did</p> <p>23 you authorize TMC to do anything that was outside the</p> <p>24 scope of the authority of Direct Energy?</p> <p>25 A. While I was working on this campaign,</p>
<p style="text-align: right;">Page 31</p> <p>1 launching another Direct Energy campaign. They were</p> <p>2 in the process of downsizing their home services in</p> <p>3 Phoenix and migrating all of their work over to me.</p> <p>4 This is the kind of stuff that I was doing on</p> <p>5 the side, but my main focus was onboarding over 300</p> <p>6 agents in 2017 for Direct Energy. So you'll have to</p> <p>7 forgive me.</p> <p>8 Q. Sure. So if the actual physical signature of</p> <p>9 Direct Energy didn't come in around that date, that</p> <p>10 might not have been something that was in your</p> <p>11 wheelhouse. That was somebody else?</p> <p>12 A. Right.</p> <p>13 (Exhibit 3 was marked for</p> <p>14 identification.)</p> <p>15 BY MR. McCUE:</p> <p>16 Q. For the record, Exhibit 3 refers to Bates</p> <p>17 1376 and 1379.</p> <p>18 If I could turn you to Tab 31?</p> <p>19 A. 31.</p> <p>20 Q. Take a moment to review that e-mail. Just</p> <p>21 let me know when you're ready.</p> <p>22 A. All of these?</p> <p>23 Q. I'm just going to refer you to Bates 003493.</p> <p>24 Have you had time to look at that?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 33</p> <p>1 everything that was done was done, you know, with the</p> <p>2 authorization of Direct Energy, yes.</p> <p>3 Q. Sure. So we referred to opt-in leads.</p> <p>4 What is your understanding of what is an</p> <p>5 opt-in lead?</p> <p>6 A. An opt-in lead is a lead where the customer</p> <p>7 has provided consent to be contacted either</p> <p>8 electronically or through the telephone, e-mails,</p> <p>9 whatever it may be. Those leads are usually -- I</p> <p>10 guess that's it.</p> <p>11 Q. Consent to be called by who?</p> <p>12 A. By whoever is listed in the opt-in language.</p> <p>13 Q. Was Direct Energy required to be listed in</p> <p>14 the opt-in language?</p> <p>15 A. I believe, when we negotiated -- when I</p> <p>16 negotiated the DMI contract -- I believe Direct Energy</p> <p>17 was listed as part of the language. So when the</p> <p>18 customer reads the fine print, it would say, "AT&T,</p> <p>19 Walmart, Direct Energy" --</p> <p>20 Q. Sure.</p> <p>21 A. -- whatever. Or any third party or whatever.</p> <p>22 Q. And the DMI contract, to refresh your memory,</p> <p>23 that was back in 2016, roughly? Is that your memory?</p> <p>24 I can show you the document.</p> <p>25 A. Yeah, yeah, 2016.</p>

<p style="text-align: right;">Page 34</p> <p>1 Q. All right. Was that before the ringless 2 voice message telemarketing began or after? 3 A. The DMI was the beginning of it. 4 Q. Okay. In terms of the opt-in vendors that 5 were subsequently used, you don't have firsthand 6 knowledge of who exactly you used? 7 A. No, sir. 8 Q. If TMC continued to use DMI, you would assume 9 there's an invoice paper trail showing that they're 10 purchasing opt-in leads from DMI? 11 A. I would assume so, but I wasn't privy to that 12 sort of stuff. 13 Q. That would be Tev -- what is his name -- 14 Tevron? 15 A. Tyson. 16 Q. Tyson. Sorry. 17 A. Things were controlled at TMC for a long time 18 by George, Tyson, and Robert. They had autonomy to do 19 whatever they wanted, and they didn't ask for my 20 permission and they didn't clue in the rest of the 21 organization about anything. So, you know... 22 Q. Okay. So then focusing on DMI -- after you 23 negotiated the contract with DMI, do you specifically 24 reach out to DMI and say, "We can only buy opt-ins 25 that are specific to Direct Energy"?</p>	<p style="text-align: right;">Page 36</p> <p>1 Q. Your personal observations. 2 A. That they have treated -- all my interactions 3 with Direct Energy have been very professional, and I 4 have nothing disparaging to say about Direct Energy or 5 any of their employees or my interactions with them. 6 Q. At any time, focusing on DMI, did you take 7 any steps to ensure that DMI was providing opt-in 8 leads in accordance with the contract? 9 A. Yes. I followed up with Tyson to make sure 10 that we were getting the information and that was 11 being provided to the client. 12 Q. What do you mean, the information that was 13 provided to the client? 14 A. We were supposed to be getting TrustedForms. 15 So every time the customer actually goes online and 16 fills out the opt-in with DMI, we were capturing that 17 information. We were actually capturing the mouse 18 movement, the IP address, all of that IOT information 19 that can be traced back to a location. Not 20 necessarily a specific person, but... 21 Q. Okay. So for every opt-in lead that was used 22 to do a ringless voicemail call for Direct Energy, 23 there should be this consent paper trail? 24 A. Under the DMI contract, correct. 25 Q. Is TMC in possession of this evidence?</p>
<p style="text-align: right;">Page 35</p> <p>1 A. That was not my job. That is IT. That falls 2 under IT to procure leads. They're given the contract 3 and the agreement, and quality assurance knows what 4 compliance things they have to look for. Accounting 5 gets what they need from the contract. But every 6 department is responsible for adhering to the 7 contract, and that's managed by Tyson, Robert and 8 George. 9 Q. Okay. 10 A. So, yeah -- I was not involved in anything 11 with -- communicating with any of those vendors. 12 Q. Okay. Does TMC still work with Direct 13 Energy? 14 A. No, we do not. 15 Q. Do you know why that relationship ended? 16 A. Because of this case. 17 Q. Okay. Did Direct Energy terminate TMC while 18 still owing it outstanding funds? 19 A. I have no idea. 20 Q. Do you think that Direct Energy has treated 21 TMC fairly? 22 A. I have no idea. 23 MR. THOMAS: Objection; calls for 24 speculation. 25 BY MR. McCUE:</p>	<p style="text-align: right;">Page 37</p> <p>1 A. I have no idea. 2 Q. In your understanding -- 3 A. I believe that was stuff that was provided. 4 What happened after Silverman and those contracts and 5 stuff like that, I don't know. 6 Q. Okay. 7 A. But that information is typically information 8 that would be submitted along with invoices and stuff 9 like that. 10 Q. Can you describe kind of the cultural 11 environment at TMC over the course between -- between, 12 say, March of 2016 through 2018, in terms of the 13 pressure to generate sales for Direct Energy? 14 A. It's a company that's built on 15 pay-for-performance. So that pressure-cooker culture 16 is always there in the telemarketing environment. So 17 I wouldn't say there was any more pressure to perform 18 for Direct Energy over any other client. 19 Q. Do you recall e-mail conversations you had 20 with Mr. Moran where you were saying, "We can increase 21 sales if we get more opt-in data"? 22 A. Yes. 23 Q. What did you mean by that? 24 A. It costs a lot of money to generate opt-in 25 data to procure a customer that is interested in your</p>

<p style="text-align: right;">Page 38</p> <p>1 offer and wants to be contacted, it costs money. So</p> <p>2 we were spending a lot of money to generate those</p> <p>3 leads and it was making the program unprofitable.</p> <p>4 Q. So what happened next? After you realized</p> <p>5 that opt-ins you were paying for were unprofitable,</p> <p>6 was there some type of adjustment made?</p> <p>7 A. Yeah. There were numerous adjustments that</p> <p>8 were made on the campaign where we were given</p> <p>9 additional bonuses on per-sales and adjustments to</p> <p>10 incentivize sales.</p> <p>11 Q. And different vendors were used as well;</p> <p>12 right?</p> <p>13 A. Yes. You told me about a few. Like I said,</p> <p>14 that was outside of my scope.</p> <p>15 Q. I don't want to tell you about a few. You</p> <p>16 had testified that there were other opt-in vendors</p> <p>17 that you recalled specifically; correct?</p> <p>18 A. I know of Brightbox being used, yes.</p> <p>19 Q. Okay. Are you aware of any contract between</p> <p>20 TMC and Direct Energy in regards to Brightbox?</p> <p>21 A. Not my area of expertise at that time.</p> <p>22 Q. Do you have any knowledge if Brightbox was</p> <p>23 subject to the same quality-control requirements about</p> <p>24 opt-ins that DMI was?</p> <p>25 A. Unfortunately, I have no idea.</p>	<p style="text-align: right;">Page 40</p> <p>1 probably about a week or two later.</p> <p>2 Q. Okay. So the first knowledge you had of the</p> <p>3 case was our efforts trying to interview you as a</p> <p>4 witness?</p> <p>5 A. Yeah.</p> <p>6 Q. Is Patrick Crocker your attorney?</p> <p>7 A. No, sir.</p> <p>8 Q. What conversations have you had with</p> <p>9 Mr. Crocker about this case?</p> <p>10 A. When I was notified of this, it was basically</p> <p>11 an e-mail that was sent with a copy of a notification</p> <p>12 that was e-mailed to the company or mailed to the</p> <p>13 company or something like that.</p> <p>14 You'll have to understand that I wasn't with</p> <p>15 the company for a bit. They've gone through some</p> <p>16 economic turmoil, and there were times where we</p> <p>17 weren't being compensated and stuff like that.</p> <p>18 Q. Right.</p> <p>19 A. So I wasn't there for a couple months, and I</p> <p>20 just recently returned to the company.</p> <p>21 Q. Okay. Have you had other conversations --</p> <p>22 substantive conversations -- with Patrick Crocker</p> <p>23 about this case?</p> <p>24 A. I asked if I was -- if they were going to</p> <p>25 provide representation in conjunction with this, and I</p>
<p style="text-align: right;">Page 39</p> <p>1 Q. Do you know if Silverman was subject to the</p> <p>2 same type of opt-in quality controls that DMI was?</p> <p>3 A. I have no idea.</p> <p>4 Q. If we wanted to figure out how long the</p> <p>5 relationship with DMI lasted for, that would be in</p> <p>6 invoices?</p> <p>7 A. Probably.</p> <p>8 Q. Do you have any knowledge if, today, TMC has</p> <p>9 this consent evidence stored anywhere?</p> <p>10 A. I have no idea, sir. The people that were in</p> <p>11 charge of those programs no longer work for TMC.</p> <p>12 Q. Who is in charge of TMC currently? I heard</p> <p>13 they're in receivership.</p> <p>14 A. Correct. The company is in receivership. It</p> <p>15 is currently -- I guess, who's in charge now would be</p> <p>16 Kelly McKenna. He is the chief receiving officer, the</p> <p>17 CRO, I believe, if that's the correct acronym.</p> <p>18 Q. Is he with, like, a firm?</p> <p>19 A. Capstone -- Capstone Leadership.</p> <p>20 Q. Has anybody asked you in this case to try to</p> <p>21 either find evidence or produce evidence to TMC to</p> <p>22 produce during the course of this litigation?</p> <p>23 A. Not at all. This came as a surprise to me.</p> <p>24 I received a letter notifying me of a deposition after</p> <p>25 the original deposition. Then I was served at work</p>	<p style="text-align: right;">Page 41</p> <p>1 was told, "No," and here I am.</p> <p>2 Q. We appreciate it.</p> <p>3 Focusing on telemarketing in general, can you</p> <p>4 describe for us how a telemarketing campaign is</p> <p>5 initiated?</p> <p>6 A. Sure. Depending on the type of campaign,</p> <p>7 usually we negotiate the contract, the contract is</p> <p>8 signed, it is disseminated to all the departments,</p> <p>9 there is a launch meeting. This is how things are</p> <p>10 done today.</p> <p>11 So we have a launch meeting with human</p> <p>12 resources, with IT, everyone -- stakeholders meeting,</p> <p>13 if you will -- everyone knows what deliverables they</p> <p>14 need to take action on and the timelines, and we just</p> <p>15 execute based on the contract.</p> <p>16 Q. Okay. Focusing more specifically on -- let's</p> <p>17 focus on ringless voicemail telemarketing back when</p> <p>18 you were familiar with the campaign, how did you</p> <p>19 physically initiate a ringless voicemail campaign?</p> <p>20 A. Wow. So, once again, we started with a</p> <p>21 contract and, you know -- can we do this? Do we have</p> <p>22 permission to do it?</p> <p>23 Once the contract was negotiated, that was</p> <p>24 turned over to Robert and George and Tyson. Tyson was</p> <p>25 our CIO. He was the director of IT, became our CIO,</p>

<p style="text-align: right;">Page 42</p> <p>1 became our VP; at one point, became the president. 2 So, you know, everything kind of ran through those 3 guys to create campaigns. 4 Leads were procured through IT. IT would 5 request leads from the vendors, get approval for 6 payment from accounting, and, you know, away we went. 7 Q. That's what I'm trying to get to -- away we 8 went. 9 Would, essentially, the numbers that have 10 been kind of vetted and approved then be put into some 11 type of Excel spreadsheet or some type of data list 12 and loaded into a computer? 13 A. The numbers for vetting the campaign? 14 Q. The numbers that are actually being called. 15 A. Yeah. The numbers that are being called, 16 they're put into some dialing -- an RVM platform, is 17 what I understand. The platform then initiates the 18 contact and delivers the messages. 19 Q. Okay. And it's an automated process; right? 20 There's no one physically dialing telephone numbers? 21 A. Correct, I believe. Yes, to the best of my 22 understanding, it's a fully automated process. 23 Q. Are you familiar with the term "predictive 24 dialer"? 25 A. Yes.</p>	<p style="text-align: right;">Page 44</p> <p>1 Q. I'm trying to understand how the RVM platform 2 works, and I understand it's your working knowledge. 3 It sounds like a list is taken with a recording and is 4 somehow communicated to the RVM platform. 5 A. Correct. 6 Q. What's your working understanding of what 7 happens next? 8 A. That platform contacts the customer, delivers 9 the message, and then the customer would initiate an 10 inbound call to the contact center. 11 Q. All right. The RVM platform, that's an 12 automated process; right? There's no one physically 13 hand-dialing numbers and sending an RVM into someone's 14 answering machine; is that correct? 15 A. That's correct. It was a separate automated 16 process. I know because we were delivering, with DMI, 17 thousands of leads at a time. No one is dialing 18 thousands of leads at a time. 19 Q. Focusing on what you testified, then the next 20 step -- calls are initiated by the RVM platform. And 21 if a consumer wanted them to respond, they would call 22 you back; is that correct? 23 A. Yes, sir. 24 Q. Then TMC had essentially a call center set up 25 to handle those calls; is that correct?</p>
<p style="text-align: right;">Page 43</p> <p>1 Q. Are you familiar with what an automatic 2 telephone dialing system is, ATDS? 3 A. Basically, yes. 4 Q. Generally, what is your working knowledge of 5 what an ATDS is? 6 A. Auto dialer is just a piece of equipment that 7 will dial a list of numbers at different pacing 8 settings. It's just a contact software or platform to 9 dial customers. 10 Q. And with RVM technology, you can also 11 physically attach a recording to the call, is that 12 correct, and then drop it into an answering machine? 13 A. I can't speak to the science of RVM. That's 14 something that, you know, guys like Tyson would be 15 better equipped to answer. 16 My understanding is that you were able to 17 leave a message on someone's phone without actually 18 ringing their phone, so no call was being initiated. 19 Q. That was all done through the automated 20 dialer? 21 A. It was not done through our dialer. It was 22 done through an RVM platform. So we had a separate 23 dialer where agents were logged into our dialer and we 24 received calls, but the RVM platform was separate from 25 our dialer.</p>	<p style="text-align: right;">Page 45</p> <p>1 A. Yes, sir. 2 Q. The RVM message, did it say, "It's TMC 3 calling," or did it say, "Are you interested in Direct 4 Energy?" 5 A. It said -- I believe the original message 6 actually said "Direct Energy" and referenced the Nest 7 offer, I believe, which was a product that they were 8 selling at the time. 9 Q. To your knowledge, at all times, was Direct 10 Energy specifically mentioned? 11 A. Yes. 12 Q. In other words, TMC had the authority to 13 specifically market using Direct Energy's trade name? 14 A. We did not have the authority to 15 specifically -- to use their trade name whenever we 16 wanted. We had a certain mockup that was approved, 17 and it was my understanding that we had to get 18 approval for any changes. 19 Q. Sure. Direct Energy approved the use of the 20 prerecorded message used with the RVM campaign; is 21 that correct? 22 A. Correct. 23 Q. That message specifically mentioned Direct 24 Energy; correct? 25 A. Yes. When I was involved, yes, absolutely.</p>

<p style="text-align: right;">Page 46</p> <p>1 Q. So then people start calling back into the 2 TMC call center. 3 Do you have, essentially, a software that can 4 handle those -- I notice we have a manual here called 5 "Disposition code training." 6 Are you familiar with what that is, 7 generally? 8 A. Uh-huh. 9 Q. What does that mean? 10 A. Disposition codes, that speaks to the quality 11 of your leads. So dispositioning is just accurately 12 coding the call for what it was. 13 Q. So an RVM message goes out to however many 14 people, a call is made into TMC. 15 What happens next? 16 A. The call would be connected to a waiting 17 agent, and the agent would go over the offer with the 18 client on the phone and take them through the sales 19 process. That call would then be dispositioned at the 20 end of the call. 21 Q. Okay. If someone called back and actually 22 complained about getting the call, was there a 23 disposition to evidence that? 24 A. Yes. If someone was irate or unhappy or they 25 requested to be removed from the calling list, there</p>	<p style="text-align: right;">Page 48</p> <p>1 calling -- opt-in leads -- really, truly were people 2 who wanted to receive Direct Energy calls? 3 A. I have no idea. Once again, that sort of 4 stuff would fall under IT and the compliance 5 department. 6 Q. Sure. What would the software be called that 7 had all the disposition codes in it? Did it have a 8 certain name? 9 A. We use -- our dialing platform is VICI. 10 That's the software that we use on the agent side to 11 do all of our call tracking and disposition. 12 Q. Is that software hosted by TMC or hosted by 13 VICI? 14 A. That's a good question. I think some of it 15 is in-house and some of it is hosted by different 16 vendors. 17 Q. If you wanted to -- say you did an RVM 18 campaign and you wanted to see how many DNC 19 dispositions there were, is that a fairly easy 20 analysis? 21 A. Yeah, it should be. 22 Q. Did TMC send over to Direct Energy DNC 23 dispositions? 24 A. I believe so. I believe that was one of the 25 things that was being sent over almost weekly, I</p>
<p style="text-align: right;">Page 47</p> <p>1 were dispositions for those too. 2 Q. Would DNC be one of those dispositions? 3 A. Correct. 4 Q. What would the other dispositions be for that 5 type of situation? 6 A. I would have to look at the dialer. I 7 haven't had view of that in quite some time. 8 Q. Sure. In your experience, did that happen? 9 Did people call back irate or upset about getting 10 ringless voicemail calls? 11 A. We had some people that did call and did not 12 remember how they opted in. We were able to educate 13 most people about how we got their lead, and they're 14 like, "Oh, yeah. Okay." 15 But some people, yes, absolutely did not want 16 to be contacted or they didn't read the fine print, 17 and we're more than happy to remove people from our 18 calling list. 19 Q. Did some people say, "I never opted in"? 20 A. Yeah, we've had people that have stated that. 21 Like I said, sometimes people forget and they don't 22 always read the fine print of how they opted in. 23 Q. Okay. That's certainly one explanation. 24 Did TMC ever do any due diligence to 25 double-check to make sure its opt-ins that it was</p>	<p style="text-align: right;">Page 49</p> <p>1 believe. 2 Q. Do you have any sense as to the volume of 3 calls that were being made via ringless voicemail? 4 A. No. I know it was significant, but I 5 couldn't speak to the number. 6 Q. Can you help us understand what is 7 significant? Is it more than 10,000 a day, more than 8 100,000 a day? 9 A. I think it was more than -- at the time that 10 I was doing it, it was more than 2, 3,000 a day. 11 Q. Okay. And it's your understanding that each 12 one of those persons specifically asked to receive a 13 Direct Energy telemarketing call? 14 A. Correct, yeah. I mean, there was a lot of 15 sizzle to the offer. You can get a free Nest 16 thermostat. And DMI had a great network of publishers 17 all across the web. 18 So, yeah, I was very confident in the leads, 19 the way that it was structured. 20 Q. But your knowledge of the leads and the 21 quality of the leads kind of begins and ends with DMI? 22 A. Yeah -- DMI and Silverman. At that time, I 23 was being transitioned out and handling other things. 24 Q. All right. I'm trying to get a handle as -- 25 today -- trying to figure out this consent issue. I</p>

<p style="text-align: right;">Page 50</p> <p>1 think you've already said that you have no knowledge 2 as to whether this consent evidence currently exists. 3 Is that your understanding? 4 A. Yes. 5 Q. Do you know who would -- would it be Tyson 6 who would have the most knowledge about where that 7 evidence exists? 8 A. Yes, sir. Tyson was the lead data person, IT 9 guy, VP, ended up -- I mean, like -- you would have to 10 understand, TMC is in receivership for a reason. 11 Right? 12 Q. Sure. 13 A. The people that were in charge, thankfully, 14 they're no longer there. But there was a lot of 15 things that were made -- a lot of just -- most 16 decisions were made without, you know, asking anyone's 17 permission below them. There wasn't any general, 18 like, "Hey, guys. Let's have a meeting and let's talk 19 about this." That's not how things were run at TMC. 20 Q. Okay. Would you be surprised, explaining 21 that culture, that, at some point during the ringless 22 voicemail telemarketing campaign, TMC started using 23 opt-in leads that were not subject to the same level 24 of quality control as DMI? 25 A. I can't speak to that.</p>	<p style="text-align: right;">Page 52</p> <p>1 share that list with Direct Energy; correct? 2 A. (Nods head.) 3 Q. You have to respond verbally. 4 A. Yeah, that's my understanding. 5 Q. Did Direct Energy, to your knowledge, ever 6 voice concerns about -- as to the number of DNC 7 dispositions? 8 A. Not to my knowledge. 9 Q. Do you have any knowledge of other types of 10 ways in which consumers complained to TMC about 11 telemarketing calls? 12 A. No, sir. 13 Q. So, like, lawsuits or formal letters or 14 anything like that? 15 A. I'm not privy to any of that, sir. 16 Q. Do you have any knowledge of an AG, an 17 attorney general, action being initiated against TMC 18 for alleged illegal telemarketing? 19 A. No, sir. 20 Q. Do you have any knowledge of TMC ever being 21 sued before for violating the Telephone Consumer 22 Protection Act? 23 A. No, sir. 24 Q. Who would have knowledge about something like 25 that?</p>
<p style="text-align: right;">Page 51</p> <p>1 MR. THOMAS: Matt, we've been going about 2 an hour -- 3 MR. McCUE: Let's take a break. 4 Ten-minute break? 5 MR. THOMAS: Sure. 6 THE VIDEOGRAPHER: We are going off the 7 record. This is the end of media unit one. 8 The time is 11:11. 9 (Brief recess.) 10 THE VIDEOGRAPHER: We are back on the 11 record. This is the beginning of media unit 12 two. The time is 11:20. 13 MR. McCUE: I just want to clean up -- we 14 had referred to Bates stamp 493 -- Direct 15 Energy 493 -- if we can just mark that as an 16 exhibit? 17 (Exhibit 4 was marked for 18 identification.) 19 BY MR. McCUE: 20 Q. Mr. Correia, let me ask you about 21 telemarketing complaints over the next category. We 22 talked about DNC dispositions and how, if people 23 complained, it would be noted in the records; right? 24 A. (Nods head.) 25 Q. Direct Energy would be shared -- you would</p>	<p style="text-align: right;">Page 53</p> <p>1 A. That's all e-level stuff. That's George, 2 Tyson, Andrew, the owner. 3 Q. And e-level, meaning executive level? 4 A. Yes, sir. 5 Q. Were you aware that Direct Energy had the 6 contractual right to audit TMC to make sure it was 7 compliant with its instructions? 8 A. Yes, sir. I was part of a DE audit. 9 Q. Okay. Did Direct Energy ever exercise its 10 right to audit TMC to make sure it was compliant with 11 its instructions? 12 A. Yes, I believe so. 13 Q. In regards to which topics? 14 A. In regards to their contracts. We conducted 15 a three-month audit in 2017 with Direct Energy. 16 Q. Okay. Did anything relating to that audit 17 have to do with telemarketing compliance? 18 A. I don't know the scope of their -- of their 19 investigation, but we were asked to justify pretty 20 much everything in all of our contracts. 21 Q. But focusing specifically on the contracts, 22 not on pattern and practice, course of performance, 23 different things like that? 24 A. Right, right. So, yeah. 25 Q. To your knowledge, did Direct Energy ever ask</p>

<p style="text-align: right;">Page 54</p> <p>1 for an audit of the opt-in vendors that TMC was using 2 for leads that it used for the ringless voicemail 3 campaigns? 4 A. Not to my knowledge. 5 Q. Did TMC ever audit, say, DMI to ensure that 6 its opt-ins were compliant with the contract? 7 A. I have no idea, sir. 8 Q. Did TMC have the authority to do that? 9 A. I would assume so, yes. 10 Q. Are you aware that, under the contract, 11 Direct Energy had the authority to audit 12 subcontractors used by TMC? 13 A. Yes, sir. 14 Q. It did have that authority? 15 A. I believe so. 16 Q. Did it exercise that authority? 17 A. They -- we had to vet the vendors; so, in 18 that regard, yes. 19 Q. What does that mean "vet the vendors"? What 20 would they do? 21 A. Any time we brought up any sort of vendor, we 22 would have to get them approved. For example, 23 Silverman -- we had to get an addendum for Silverman. 24 DMI -- we had to get an addendum for DMI. 25 We had brought on some third-party vendors to</p>	<p style="text-align: right;">Page 56</p> <p>1 contract. But there were discussions in the beginning 2 about whether they could get this approved, you know, 3 number one. So there were discussions about the 4 process, but not specifically what you're asking. 5 Q. Okay. And I'm assuming that, if all -- if 6 all these opt-ins were legitimate in that there truly 7 was consent for each unique phone number, there should 8 be a consent paper trail for each number that was 9 called via ringless voicemail message; is that 10 correct? 11 A. Yes, sir. To the best of my understanding, 12 yes. 13 Q. So if two and a half million people were 14 called between June of 2017 and June of 2018 by 15 Silverman, on behalf of TMC, on behalf of Direct 16 Energy, there should be two and a half million consent 17 records? 18 MR. THOMAS: Objection; assumes facts not 19 in evidence. 20 BY MR. McCUE: 21 Q. You can still answer. He's objecting for the 22 record. 23 A. I would assume so. 24 Q. If everyone is doing their job -- 25 A. If everyone's doing their job --</p>
<p style="text-align: right;">Page 55</p> <p>1 call on our behalf as well, and that was also approved 2 by DE. 3 Q. Okay. What is the big picture? What are 4 they vetting? Do you have an understanding of what 5 kind of data they're asking for? 6 A. Typically, they want the name of the company, 7 ownership, history, basic financial information. I 8 think there was a one-pager that we had to fill out 9 and submit it to procurement, along with the request 10 to have them vetted. 11 Q. Okay. Did you ever have conversations with 12 anyone at Direct Energy where they were essentially 13 asking, "Were these opt-ins legitimate?" 14 A. No, no. 15 Q. No conversations with John Moran or anyone -- 16 A. No, sir. 17 Q. -- in that regard? 18 A. No, sir. 19 Q. Who is John Moran's supervisor? 20 A. John Moran's supervisor, at the time, was 21 David Schotz. 22 Q. No memory of David Schotz ever expressing 23 concerns about the legitimacy of opt-ins? 24 A. No, sir; not in the context that they thought 25 what we were doing was outside of the scope of the</p>	<p style="text-align: right;">Page 57</p> <p>1 Q. -- and it's truly consented to, there should 2 be two and a half million opt-in records that show 3 specific consent to receive Direct Energy calls? 4 A. Yes. 5 Q. To your knowledge, does that exist? 6 A. I have no idea. I didn't pick the vendors; I 7 didn't pick the platforms; I didn't pick the leads. I 8 didn't pay for them. I mean... 9 Q. All you can do is testify to what you're 10 aware of. 11 A. Yeah. This is one of those times where I'm 12 glad I wasn't at the big boys' table. 13 Q. How would you describe the payment 14 relationship between Direct Energy and TMC? In other 15 words, was Direct Energy frequently behind in its 16 payments? 17 A. Was Direct Energy behind in its payments to 18 TMC? 19 Q. Right. 20 A. I have no idea. 21 Q. So you weren't involved in e-mails back and 22 forth saying, "Half a million dollars is due. This is 23 a crisis. We need to pay our vendors"? You weren't 24 involved in those discussions -- 25 A. There were several times I was asked to reach</p>

<p style="text-align: right;">Page 58</p> <p>1 out to the client about where invoices were, but those 2 were typically issues where the invoice wasn't 3 submitted properly and there was missing data. And 4 those were typically -- I just dealt with home 5 services. 6 So, yes, in home services, there were times 7 where Ashley Carter didn't approve invoices on time, 8 and we would have to reach out to her to nudge her and 9 figure out what was going on. On the energy side, I 10 have no clue. 11 Q. Do you have a sense as to how big of a client 12 Direct Energy was for TMC in terms of revenue -- 13 per-year revenue? 14 A. I would say they were pretty big. For the 15 campaign that I was running, home services, it was on 16 par of about 6,000,000 a year. 17 Q. That's just one campaign? 18 A. That was just the campaign I was in charge 19 of. 20 Q. And is that a telemarketing campaign? 21 A. In the sense that we're using the phone. 22 It's an inbound appointment-setting campaign. I guess 23 it's how you categorize the telemarketing. 24 Q. Well, did it use ringless voicemail message? 25 A. No, sir. It's in the contract that we could</p>	<p style="text-align: right;">Page 60</p> <p>1 A. Yeah. 2 Q. Focusing back on opt-in data -- after TMC 3 purchased opt-in data, did it send it to Direct Energy 4 to do some type of scrubbing? Are you aware of that? 5 A. I have no idea. I believe we were 6 responsible for the data. 7 Q. Okay. Do you recall Direct Energy saying, "I 8 don't want to pay for data we already have, so I want 9 you to send it to me so we can remove existing data"? 10 A. I believe there may have been conversations 11 like that. I think that's conversations we ended up 12 having with lots of clients. 13 Q. Okay. If Direct Energy wanted to test that 14 data to make sure that people were actually consenting 15 to receive calls, they could do a sampling of it and 16 call these people and say, "Did you really opt in to 17 receive Direct Energy calls?" They could do that? 18 A. Yes. 19 MR. THOMAS: Objection; calls for 20 speculation. 21 BY MR. McCUE: 22 Q. Let's turn now to training as a general 23 topic. 24 Could you explain for me how Direct Energy 25 was involved in the training of TMC employees? Let's</p>
<p style="text-align: right;">Page 59</p> <p>1 have, but it's not something that's feasible in the 2 home services. We're taking calls for people that 3 have problems with their electrical, their plumbing, 4 or their HVAC. 5 So these are people that are calling us in an 6 emergency and we're just booking a call. The only 7 outbound call we would make is to, like, confirm an 8 appointment, a follow-up. 9 Q. How do they learn about Direct Energy's 10 services? 11 A. That's a good question. That's the first 12 question we ask in our script after their ZIP code. 13 MR. THOMAS: We're going to sign you up, 14 Matt. 15 A. Yeah. You can be an agent. 16 So, typically, they're previous customers, so 17 they have a magnet or something in their home. DE 18 does a lot of advertising. There's the trucks -- 19 advertising on the trucks, billboards, radio ads, TV 20 ads. Right? For us, that's easy. 21 Q. On a Direct Energy truck would be a TMC phone 22 number? 23 A. No, no, no. It's the Direct Energy number 24 that gets routed to us. 25 Q. I see. I understand.</p>	<p style="text-align: right;">Page 61</p> <p>1 cabin it specifically to ringless voicemail 2 telemarketing campaigns. 3 A. How Direct Energy was involved with the 4 training of -- 5 Q. Right, right. 6 A. They did not provide any of the training for 7 the ringless voicemail campaign. I don't understand 8 the question. 9 Q. Maybe we'll have to go more general. There's 10 references throughout the documents to TMC employees 11 logging onto Direct Energy websites, and, it's my 12 understanding, going through certain training. 13 I'm trying to understand from your 14 perspective, how did that work -- what was that about? 15 A. Ringless voicemail doesn't impact the 16 training. So ringless voicemail, to my understanding, 17 is just a technology that delivers the calls. 18 So for the training of the employee, we 19 wouldn't have to train the employee on ringless 20 voicemail. 21 Q. Okay. So let's broaden it. Training in 22 general. 23 A. Right. 24 Q. So how would Direct Energy be involved in 25 training -- generally training -- a TMC employee,</p>

<p style="text-align: right;">Page 62</p> <p>1 let's say, who's going to be involved in telemarketing 2 in general? 3 A. They provided the training material for the 4 campaigns, you know. They provided information about 5 the Nest product, about the rates, service 6 territories. They provided a lot of guidance in how 7 the program should be structured and monitored. 8 Q. Okay. Did TMC provide, say, cloud-based or 9 internet hookup -- different mechanisms where TMC 10 could log onto different systems and get training? 11 A. Training was in-house. I think some of it 12 may be cloud-based, but I don't think agents could 13 access training outside of the company. 14 Q. Okay. Did Direct Energy provide the trainers 15 themselves to come and train? 16 A. Often. 17 Q. So Direct Energy paid for those trainers to 18 come and train TMC employees? 19 A. Typically, it was on home services, not on 20 energy. Energy -- we had existing energy campaigns 21 and there wasn't really a requirement for training 22 from Direct Energy. They provided training material. 23 But I don't recall any hands-on trainer coming from DE 24 for energy. 25 On the other lines of business, like the ones</p>	<p style="text-align: right;">Page 64</p> <p>1 2017 was a fun year for me. 2 Q. But in terms of the telemarketing side, do 3 you have any knowledge of that type of support being 4 given to TMC? 5 A. No, because we were doing outbound dialing 6 for them. So there was no talk of being placed on 7 their Avaya system or anything like that. Not to my 8 knowledge. 9 Q. What computer system did Direct Energy make 10 available to TMC so that TMC could actually close 11 sales? 12 A. Oh, wow. That would be the TPV portal. 13 Q. Does that stand for something specifically? 14 A. The third-party vendor portal. 15 Q. TPV? 16 A. Right. 17 Q. Generally, how would that work? Someone 18 calls in -- let's say ringless voicemail -- somebody 19 calls in, "Yes, I'm interested in a Nest." 20 What happens next? 21 A. We would transfer you to a third-party 22 company -- I can't remember the name of the company -- 23 there's been so many over the years -- where the call 24 would be recorded and vetted for the customer's 25 protection and the client's protection. And we go</p>
<p style="text-align: right;">Page 63</p> <p>1 I manage, we had constant support for home services. 2 There was someone there all the time. 3 Q. And there may be constant support for, say, 4 the telemarketing side, but that's not in your silo? 5 A. Right. 6 Q. Who would be most knowledgeable about that? 7 A. That's Robert Svendsen. He was in charge of 8 energy. 9 Q. Did Direct Energy provide equipment for TMC 10 to use when telemarketing? 11 A. Yes. We've had campaigns -- once again, home 12 services -- where, in 2017, we were not only going 13 through a Direct Energy audit for home services, but 14 we were also onboarding, like, 300 agents when their 15 Phoenix call center closed down. But we also made a 16 hardware migration in 2017 onto their Avaya platform. 17 So, specifically hardware, yes. 18 Q. I'm referencing specific e-mails where Direct 19 Energy is saying, "The Avaya phones are on the way." 20 Is that consistent with your memory? 21 A. Correct. That's for the home services 22 campaigns. So the Avaya phone system, we took 23 delivery of -- I can't remember -- probably, like, 80 24 Avaya phones from Direct Energy, got set up on their 25 switch and everything like that for home services.</p>	<p style="text-align: right;">Page 65</p> <p>1 through the basic information -- customer's name, 2 account information, and consent and understanding 3 that they're making a change to their supplier today. 4 Q. Can you turn to Tab 76? If you can take a 5 look at the document that's at page 76, there's no 6 Bates reference to it, but, for the record, this was 7 an Excel document produced by TMC, evidencing the 8 purported consent of our client to receive Direct 9 Energy telemarketing calls. 10 Once you've taken a look at that, let me 11 know. 12 A. I've never seen this before, so... 13 Q. Okay. Were you involved at all in 14 investigating the telemarketing calls received by 15 Matthew Dickson, who's the plaintiff in this case? 16 A. I received e-mails about them, but I 17 forwarded those on to Robert. 18 Q. Okay. What did those e-mails say? 19 A. I believe, initially, John Moran or Madeline 20 had inquired about, you know, "Do you have the opt-in 21 record?" I wasn't managing, so I forwarded it over to 22 the manager, which was Robert, and... 23 Q. Okay. I guess, what I'm trying to figure 24 out -- do you know where this came from? 25 A. I have no idea.</p>

<p style="text-align: right;">Page 66</p> <p>1 Q. That would be Robert --</p> <p>2 A. Svendsen.</p> <p>3 Q. -- Svendsen, who, to the best of your</p> <p>4 knowledge, would know where this came from?</p> <p>5 A. Correct. Him and Tyson Chavarie. This looks</p> <p>6 like an IT kind of thing. It has IP addresses and</p> <p>7 stuff on it.</p> <p>8 Q. Could you help me understand -- I've seen</p> <p>9 documents referencing daily RVM reports going back and</p> <p>10 forth between TMC and Direct Energy.</p> <p>11 Do you have knowledge of what those are?</p> <p>12 A. No.</p> <p>13 Q. Do you have any knowledge as to, under the</p> <p>14 contract you negotiated, what was the reporting</p> <p>15 requirements for TMC?</p> <p>16 A. I don't recall.</p> <p>17 Q. There's often references to USHS. Can you</p> <p>18 help me understand what that means?</p> <p>19 A. Sure. That's United States Home Services.</p> <p>20 That's what I do. I can talk about that. I know lots</p> <p>21 of stuff there.</p> <p>22 Q. OBTM, what does that mean?</p> <p>23 A. Outbound telemarketing. We started out doing</p> <p>24 outbound telemarketing for USHS back in, like, I</p> <p>25 think, 2015, 2016. My dates are kind of off.</p>	<p style="text-align: right;">Page 68</p> <p>1 A. Go back to USHS.</p> <p>2 Q. Do you recall getting opinion letters from</p> <p>3 Patrick Crocker about the legality of ringless</p> <p>4 voicemail?</p> <p>5 A. I believe I saw an e-mail come through from</p> <p>6 Patrick Crocker about that, yes.</p> <p>7 Q. Do you recall an internal debate as to</p> <p>8 whether or not RVM can be done without opt-ins?</p> <p>9 A. That was outside of my scope.</p> <p>10 MR. McCUE: Why don't we take five</p> <p>11 minutes, rather than me look at my notes</p> <p>12 while you look at me, and I will see what</p> <p>13 else I have.</p> <p>14 THE VIDEOGRAPHER: We are going off the</p> <p>15 record. The time is 11:43.</p> <p>16 (Brief recess.)</p> <p>17 THE VIDEOGRAPHER: We are back on the</p> <p>18 record. The time is 11:51.</p> <p>19 BY MR. McCUE:</p> <p>20 Q. If you could turn to page 67 of the binder --</p> <p>21 Tab 67. Is this -- if you could take a look at this</p> <p>22 e-mail?</p> <p>23 A. Yes, sir.</p> <p>24 Q. Let me know when you're ready.</p> <p>25 A. I'm ready.</p>
<p style="text-align: right;">Page 67</p> <p>1 But, yeah -- I mean, we started off calling</p> <p>2 their non-club and cold-call customers and earned the</p> <p>3 inbound work after that, so -- yeah.</p> <p>4 Q. Help me understand what the Discovery system</p> <p>5 is.</p> <p>6 A. I have no idea what the Discovery system is.</p> <p>7 Q. How about Pogo and DX Access?</p> <p>8 A. Oh, okay, okay. I know what you're talking</p> <p>9 about now.</p> <p>10 Discovery, Pogo, all that stuff is on the</p> <p>11 energy side. I think that's the platform that they</p> <p>12 used to do credit checks for Texas, I believe. I</p> <p>13 believe that's what Pogo is.</p> <p>14 Q. How about DX Access, any idea?</p> <p>15 A. Oh, DXC -- I think that's probably DXC. That</p> <p>16 was the TPV company, the third-party company. That</p> <p>17 makes sense now.</p> <p>18 Q. Do you recall if, during the summer of 2017,</p> <p>19 there was a request -- TMC made a request to do what</p> <p>20 they call expanded RVM? In other words, they</p> <p>21 wanted --</p> <p>22 A. No, sir.</p> <p>23 Q. Okay.</p> <p>24 A. Sorry.</p> <p>25 Q. All right.</p>	<p style="text-align: right;">Page 69</p> <p>1 Q. Does this e-mail refresh your recollection as</p> <p>2 to whether or not you were involved in talking about</p> <p>3 opt-in leads with John Moran back in November of 2017?</p> <p>4 A. They requested the information from 2016 and</p> <p>5 I forwarded it to them. That was the extent of the</p> <p>6 discussion.</p> <p>7 Q. Do you know what context that was in? What</p> <p>8 did they want that information for?</p> <p>9 A. In response to, I believe, this case, I</p> <p>10 guess. And I provided what I did, which was the DMI</p> <p>11 contract.</p> <p>12 Q. Turn to Tab 21 --</p> <p>13 MR. THOMAS: Do you want to mark this?</p> <p>14 MR. McCUE: I'm sorry. We can mark</p> <p>15 Tab 67 as the next exhibit.</p> <p>16 (Exhibit 5 was marked for</p> <p>17 identification.)</p> <p>18 BY MR. McCUE:</p> <p>19 Q. Take a look through that e-mail and let me</p> <p>20 know when you're ready.</p> <p>21 A. I think I'm ready.</p> <p>22 Q. All right. I'm showing you an e-mail --</p> <p>23 there's an e-mail above your e-mail from David Schotz</p> <p>24 to John Moran. And if you could take a look at that</p> <p>25 first e-mail, I'll ask you a question.</p>

<p style="text-align: right;">Page 70</p> <p>1 A. I'm sorry.</p> <p>2 Q. Let me know when you're ready and I'll just</p> <p>3 ask you a general question.</p> <p>4 A. Sure.</p> <p>5 Q. We're looking at Bates 1872; correct?</p> <p>6 A. 1872, yes, sir.</p> <p>7 Q. First, I'm looking at an e-mail from you to</p> <p>8 John Moran, dated March 30, 2017.</p> <p>9 Do you see where I am?</p> <p>10 A. Yes.</p> <p>11 Q. Having read that e-mail, what is the context</p> <p>12 and substance of this e-mail discussion between you</p> <p>13 and Mr. Moran?</p> <p>14 A. I believe this was renegotiating the price</p> <p>15 for the leads on the DMI contract.</p> <p>16 Q. Okay. Are you certain that this was DMI that</p> <p>17 you're negotiating with that you refer to as the lead</p> <p>18 partner?</p> <p>19 A. I can't -- I don't know.</p> <p>20 Q. Above that, there's a conversation between</p> <p>21 Mr. Schotz and Mr. Moran that's referring to your</p> <p>22 below e-mail about leads. It says, "This is good to</p> <p>23 see. Please inspect here that these are all true</p> <p>24 opt-ins."</p> <p>25 Do you see that?</p>	<p style="text-align: right;">Page 72</p> <p>1 But I did have that client relationship prior</p> <p>2 to that, so I was expected to continue to maintain</p> <p>3 that sort of relationship -- sending e-mails here and</p> <p>4 there and just...</p> <p>5 Q. So, for example, this e-mail that we're</p> <p>6 talking about at Bates 1872 is from March of 2017;</p> <p>7 correct?</p> <p>8 A. Right.</p> <p>9 Q. This was during the time when you were --</p> <p>10 A. Focused on home services.</p> <p>11 Q. Right. But you were still in the e-mail</p> <p>12 chain with Mr. Moran because of your relationship with</p> <p>13 him?</p> <p>14 A. Yes, sir.</p> <p>15 MR. McCUE: If we can mark this as the</p> <p>16 next exhibit?</p> <p>17 (Exhibit 6 was marked for</p> <p>18 identification.)</p> <p>19 BY MR. McCUE:</p> <p>20 Q. I'm going to take you to Tab 86.</p> <p>21 A. 86.</p> <p>22 Q. I'll ask you to look through the first three</p> <p>23 pages, Bates 9021 through 9023. Let me know when</p> <p>24 you're ready.</p> <p>25 A. I'm ready.</p>
<p style="text-align: right;">Page 71</p> <p>1 A. Yes, sir.</p> <p>2 Q. "We should listen to these calls and see</p> <p>3 where they are opting in from, et cetera. Just really</p> <p>4 make sure this is solid."</p> <p>5 Do you see that?</p> <p>6 A. Yes, sir.</p> <p>7 Q. Are you aware of any follow-up conversation</p> <p>8 from Mr. Schotz or Mr. Moran in response to that</p> <p>9 discussion?</p> <p>10 A. No, sir. Like I said, I wasn't in charge of</p> <p>11 the day-to-day of this campaign, you know. I was the</p> <p>12 face for the client and sending things back and forth,</p> <p>13 but that was the extent of it.</p> <p>14 Q. Would you agree that you were a primary point</p> <p>15 of contact at least with Mr. Moran?</p> <p>16 A. Yes, I was for a period of time. But Robert</p> <p>17 Svendsen became the point of contact, instead of me.</p> <p>18 Q. Okay. What general timeframe would that have</p> <p>19 been?</p> <p>20 A. That was 2016 -- end of 2016 -- when we</p> <p>21 learned about the franchise work coming to us. I was</p> <p>22 moved over to home services, and Robert took control</p> <p>23 of everything. He was my senior anyway. And, at that</p> <p>24 point, Robert was controlling all of energy and I was</p> <p>25 completely outside of it.</p>	<p style="text-align: right;">Page 73</p> <p>1 Q. Does this e-mail chain refresh your</p> <p>2 recollection of whether or not you were involved in a</p> <p>3 discussion with John Moran back in August of 2017</p> <p>4 about ringless voicemail and the TCPA and Mr. Crocker?</p> <p>5 A. Yes, sir.</p> <p>6 Q. Tell me your current memory of the context of</p> <p>7 this e-mail. What happened?</p> <p>8 A. I believe John Moran had asked us these</p> <p>9 questions, and this was the formal response that I was</p> <p>10 asked to give at the time.</p> <p>11 Q. Was the context of this that Direct Energy</p> <p>12 was kind of vetting whether or not to do ringless</p> <p>13 voicemail telemarketing without opt-ins?</p> <p>14 A. I have no idea. I don't know what was going</p> <p>15 on at that time in 2017. I have no idea.</p> <p>16 Q. Okay.</p> <p>17 A. Or I can't remember, right? I mean...</p> <p>18 Q. Sure. If I can reference you to page 9022?</p> <p>19 A. Okay.</p> <p>20 Q. Towards the bottom of the page.</p> <p>21 A. Right.</p> <p>22 Q. The question is, "Does Direct Energy have</p> <p>23 prior written consent from the person we hope to</p> <p>24 contact via RVM?" The response is, "No."</p> <p>25 Is that correct?</p>

<p style="text-align: right;">Page 74</p> <p>1 A. Yes, sir.</p> <p>2 Q. Was this your e-mail that you're filling out</p> <p>3 and sending over to Direct Energy?</p> <p>4 A. I believe this was the -- the questions were</p> <p>5 asked by John Moran and I was just responding to them.</p> <p>6 Q. Okay. Were you responding with your personal</p> <p>7 knowledge or were you getting answers from other</p> <p>8 people?</p> <p>9 A. I was getting answers from other people. I</p> <p>10 believe this was -- I believe the answers came from</p> <p>11 Tyson.</p> <p>12 Q. Okay. And the context of this on page 9022</p> <p>13 is, you're discussing Silverman; correct?</p> <p>14 A. I believe so, right. The questions are about</p> <p>15 Crocker & Crocker and Silverman, I believe.</p> <p>16 Q. And using Silverman to do ringless voicemail</p> <p>17 telemarketing; correct?</p> <p>18 A. Yes, sir.</p> <p>19 Q. And the question is, "Does Silverman have</p> <p>20 prior express written consent to send RVM calls to</p> <p>21 consumers?" And your answer is, "No."</p> <p>22 Is that correct?</p> <p>23 A. Where is that, sir?</p> <p>24 Q. Towards the bottom of the page -- the top of</p> <p>25 the page, we're talking about Silverman; correct?</p>	<p style="text-align: right;">Page 76</p> <p>1 bullet point on page 9022 -- are you with me?</p> <p>2 A. Correct.</p> <p>3 Q. "Does DE" -- does DE mean Direct Energy?</p> <p>4 A. Yes.</p> <p>5 Q. -- "have prior written consent from the</p> <p>6 person we hope to contact via RVM?"</p> <p>7 Did I read that correctly?</p> <p>8 A. Correct.</p> <p>9 Q. And the answer is, "No"?</p> <p>10 A. Correct.</p> <p>11 Q. I know you negotiated the DMI contract.</p> <p>12 Were you also familiar with the underlying</p> <p>13 teleservices agreement between Direct Energy and TMC</p> <p>14 that was negotiated about a year earlier in 2015?</p> <p>15 A. I believe that was the one that was started</p> <p>16 with Brian Cain.</p> <p>17 MR. THOMAS: Matt, before we go on, did</p> <p>18 we mark Tab 86?</p> <p>19 MR. McCUE. Let's do that. For the</p> <p>20 record, Tab 86 refers to Direct Energy</p> <p>21 009021.</p> <p>22 (Exhibit 7 was marked for</p> <p>23 identification.)</p> <p>24 THE WITNESS: And to answer your</p> <p>25 question, it's my understanding of -- when</p>
<p style="text-align: right;">Page 75</p> <p>1 A. Yes. "Who is Silverman?"</p> <p>2 Q. Right. And we're also talking about ringless</p> <p>3 voicemail delivery; correct? If we go back to</p> <p>4 page 9021, the subject matter of the e-mail --</p> <p>5 A. Right.</p> <p>6 Q. So I'm just trying to put the three together.</p> <p>7 The subject matter is about ringless voicemail</p> <p>8 delivery. They're asking about Silverman, and can we</p> <p>9 use Silverman to deliver these ringless voicemail</p> <p>10 calls; correct?</p> <p>11 A. Correct.</p> <p>12 Q. And then the question is, "Does Silverman</p> <p>13 have prior express consent to contact via RVM?" And</p> <p>14 the answer is, "No."</p> <p>15 A. I don't --</p> <p>16 MR. THOMAS: I'm going to object. I</p> <p>17 think that mischaracterizes --</p> <p>18 A. I don't see that question --</p> <p>19 MR. THOMAS: She can't write twice --</p> <p>20 over each other. One of us can only talk at</p> <p>21 a time.</p> <p>22 I'm going to object. I think that</p> <p>23 mischaracterizes this document.</p> <p>24 BY MR. McCUE:</p> <p>25 Q. Let me read it verbatim. The second to last</p>	<p style="text-align: right;">Page 77</p> <p>1 this was answered -- that, you know, we are</p> <p>2 getting consent by the opt-in.</p> <p>3 So does DE have prior written consent</p> <p>4 from any of these people? No. But we're</p> <p>5 getting consent in the opt-in.</p> <p>6 BY MR. McCUE:</p> <p>7 Q. From who?</p> <p>8 A. From the customers.</p> <p>9 Q. From who? Who are you getting the opt-ins</p> <p>10 from?</p> <p>11 A. From the customers themselves, by going</p> <p>12 online or wherever they go to opt in for the lead.</p> <p>13 Q. I understand that. But back in this</p> <p>14 timeframe -- we're talking August of 2017 -- who was</p> <p>15 TMC using to get opt-in leads?</p> <p>16 A. I have no idea.</p> <p>17 Q. So that exhibit refers to Bates 90 --</p> <p>18 A. I believe it's Silverman, right?</p> <p>19 Q. You've got to --</p> <p>20 A. Sorry.</p> <p>21 Q. -- refers to 9021 through 9025.</p> <p>22 Back to your testimony. Is it your</p> <p>23 understanding that, in August of 2017, TMC was</p> <p>24 purchasing opt-in leads from Silverman?</p> <p>25 A. According to this document, yes.</p>

<p style="text-align: right;">Page 78</p> <p>1 Q. Does that refresh your memory about when and 2 what timeframe TMC used Silverman to buy opt-in leads? 3 A. Vaguely. Like I said, I wasn't involved in 4 the day to day of what leads were being purchased, who 5 they were being purchased from, and that sort of 6 stuff. It's several years ago. 7 Q. Were you aware, when you were working with 8 Direct Energy, that they had the right to listen in on 9 sales calls? 10 A. Yes, sir. 11 Q. How would that work? 12 A. Clients can dial in and monitor. We also 13 provide recordings of calls. 14 Q. How often did TMC provide recordings of calls 15 to Direct Energy? 16 A. On my campaign, it wasn't very often because 17 they had access to the calls. So, on the calling 18 platform that I managed, the calls were routed to us 19 through a system called Callcap, so they actually had 20 full recordings of the conversations and it didn't 21 really require too much for us to send to them. They 22 had it all. 23 Q. So, really anytime, Direct Energy could 24 listen in on a TMC sales call? 25 A. On my campaign, correct. And on energy,</p>	<p style="text-align: right;">Page 80</p> <p>1 expectations. 2 Q. Okay. The contract refers to TMC 3 facilitating focus groups at Direct Energy's request. 4 Are you familiar with that? 5 A. Yes, sir. 6 Q. Did that actually happen? 7 A. Yes. We did a lot of focus groups. Once 8 again, I can't speak about the energy side. But on 9 the home services side, we did a lot of breakout 10 sessions, focus groups. And those were scheduled by 11 workforce management over at Direct Energy. 12 Q. Okay. Did Direct Energy dictate to TMC, 13 like, the time of day they could send out 14 telemarketing calls? 15 A. I don't believe so. I think all of that sort 16 of stuff is governed by the TCPA, the rules for 17 individual states. 18 Q. But, other than that, so could Direct Energy 19 say, "Look, we only want calls to start at noon and 20 end at 3:00"? Did they have the power to do that? 21 A. Oh, absolutely, yes. 22 Q. Similarly, did they have the authority to 23 tell TMC how many telemarketing reps they want on a 24 certain shift? 25 A. Certainly, yes, sir.</p>
<p style="text-align: right;">Page 79</p> <p>1 theoretically, yes, they could. They would have to 2 set up a monitoring session. But, on my campaign, 3 they could listen any time they wanted because it was 4 their system. 5 Q. So if Direct Energy wanted to know if people 6 were making "do not call" requests, they would get 7 both the "do not call" lists from TMC -- correct? 8 A. Correct. 9 Q. -- and they could listen in to as many sales 10 calls as they wanted -- 11 A. Yes, sir. 12 Q. -- to see if people were complaining or not? 13 A. Yes, sir. 14 Q. To your knowledge, did Direct Energy ever do 15 that in regards to the ringless voicemail campaigns? 16 A. I have no idea, sir. 17 Q. Are you aware, under the contract, that TMC 18 was required to provide Direct Energy with what they 19 called call quality monitoring evaluations? 20 A. Yes, sir. 21 Q. What is that? 22 A. We had -- we had regular calibrations with 23 their quality team, where we would actually listen to 24 calls, score them, and calibrate to make sure that 25 our quality teams were in line with their</p>	<p style="text-align: right;">Page 81</p> <p>1 Q. Did that actually happen? 2 A. I would assume so, yes. They controlled 3 their cost to acquire and manage it by adjusting 4 staffing, so, yeah. 5 Q. Direct Energy had the power to adjust 6 staffing at TMC? 7 MR. THOMAS: Objection; mischaracterizes 8 testimony. 9 BY MR. McCUE: 10 Q. TMC had the -- Direct Energy had the 11 authority to direct staffing at TMC? 12 MR. THOMAS: Same objection. 13 A. They could make requests for staffing 14 changes. Ultimately, they're the client and they're 15 paying the bill. So, you know, if they want five 16 employees, we'd put five employees. If they want ten 17 employees, we'd put ten employees. It's based on the 18 goal that's set by the client. 19 So I guess the answer is, yes, ultimately. 20 BY MR. McCUE: 21 Q. Was TMC required to tell Direct Energy if 22 they received, say, an AG complaint about 23 telemarketing? 24 A. I don't know. I'm not familiar with all the 25 terms in the contract.</p>

<p style="text-align: right;">Page 82</p> <p>1 Q. Sure. What was your understanding of the</p> <p>2 power that Direct Energy had to discipline or</p> <p>3 terminate TMC?</p> <p>4 A. I think most of those energy contracts are</p> <p>5 written that way, where, you know, the client can</p> <p>6 terminate us for cause.</p> <p>7 Q. Do you have an understanding of what cause</p> <p>8 would be under the contract?</p> <p>9 A. Violations of any terms in the contract.</p> <p>10 Q. Would violating telemarketing law or</p> <p>11 allegedly violating telemarketing law be a cause for</p> <p>12 discipline?</p> <p>13 A. I would assume so.</p> <p>14 Q. Did that ever happen?</p> <p>15 A. Yes. We had issues in Connecticut, where our</p> <p>16 tele-salespeople were being too aggressive, and we</p> <p>17 were reprimanded for that and removed from dialing.</p> <p>18 Q. When you say, "too aggressive," do you mean</p> <p>19 more like an unfair representation versus an illegal</p> <p>20 violation of the TCPA?</p> <p>21 A. I would have to -- I don't think it was</p> <p>22 TCPA-related -- it was not TCPA-related.</p> <p>23 Q. Okay. But, in that instance, Direct Energy</p> <p>24 came in and said, "We're going to make some changes,"</p> <p>25 and issued some discipline?</p>	<p style="text-align: right;">Page 84</p> <p>1 Q. Turn to page 4 -- binder page 4. Let me know</p> <p>2 when you're ready.</p> <p>3 MR. McCUE: Mark, this is the next</p> <p>4 exhibit.</p> <p>5 A. I believe I'm ready.</p> <p>6 (Exhibit 8 was marked for</p> <p>7 identification.)</p> <p>8 BY MR. McCUE:</p> <p>9 Q. We've referenced a bunch of times today a</p> <p>10 contract that you negotiated with DMI for opt-in</p> <p>11 leads; is that correct?</p> <p>12 A. Yes, sir.</p> <p>13 Q. Is this the contract that you're referring</p> <p>14 to?</p> <p>15 A. I believe so. This looks like it.</p> <p>16 Q. For the record, we're talking about Bates 47</p> <p>17 through 57.</p> <p>18 A. There is no 47 -- oh, I'm sorry -- yeah. 47</p> <p>19 through 57.</p> <p>20 Q. Take your time.</p> <p>21 A. Yes. I believe this is -- this looks like</p> <p>22 it, to my recollection.</p> <p>23 Q. So is it your testimony that the opt-in leads</p> <p>24 that Direct Energy used for the ringless voicemail</p> <p>25 campaigns, at least at the beginning, began with</p>
<p style="text-align: right;">Page 83</p> <p>1 A. Yes, sir.</p> <p>2 Q. It had the authority and ability to do that?</p> <p>3 A. Yes, sir.</p> <p>4 Q. And your understanding is that the</p> <p>5 relationship between TMC and Direct Energy was</p> <p>6 terminated specifically because of this lawsuit?</p> <p>7 A. That's my guess. I was not part of the</p> <p>8 company when all of this went down. I came back to</p> <p>9 the company recently and learned that we were no</p> <p>10 longer doing Direct Energy work. Because, when I</p> <p>11 left, I think we were still doing it. I'm not quite</p> <p>12 sure.</p> <p>13 Like I said, in my department, we are still</p> <p>14 doing some work, which is not -- it's complicated. It</p> <p>15 used to be Direct Energy. It's now Authority Brands.</p> <p>16 Direct Energy divested themselves of the campaign that</p> <p>17 I was responsible for.</p> <p>18 So I really haven't had much to do with</p> <p>19 Direct Energy. I've been more focused on Authority</p> <p>20 Brands and their franchise work. So, you know, I'm</p> <p>21 sorry that there's gaps in my memory and...</p> <p>22 Q. Sure. Just do the best you can.</p> <p>23 A. Yeah.</p> <p>24 Q. Just a few more questions for you.</p> <p>25 A. Sure.</p>	<p style="text-align: right;">Page 85</p> <p>1 opt-in leads purchased from DMI? Is that correct?</p> <p>2 A. That's what I set up; yes, sir.</p> <p>3 Q. And then, this contract then specifies</p> <p>4 exactly what that opt-in is supposed to look like?</p> <p>5 A. Correct.</p> <p>6 Q. If I can turn your attention to paragraph 1,</p> <p>7 it says "term."</p> <p>8 Do you see where I am?</p> <p>9 A. Yes.</p> <p>10 Q. I'll just read this to you and you let me</p> <p>11 know if I read it correctly.</p> <p>12 "The parties agree to a 30-day calendar trial</p> <p>13 period beginning on the date upon which services</p> <p>14 commence, as mutually determined by the parties, trial</p> <p>15 period. During the trial period, either may terminate</p> <p>16 this SOW for any reason upon 48 hours written notice</p> <p>17 to the other party."</p> <p>18 "The parties will negotiate in good faith and</p> <p>19 determine if the services will continue past the trial</p> <p>20 period upon execution of a written agreement between</p> <p>21 the parties reflecting mutually agreeable commercial</p> <p>22 terms for performance of the services. If this SOW</p> <p>23 continues in effect beyond the trial period, either</p> <p>24 party may terminate this SOW upon 30 days written</p> <p>25 notice without penalty."</p>

<p style="text-align: right;">Page 86</p> <p>1 Did I read that correctly?</p> <p>2 A. Yes, sir.</p> <p>3 Q. Is it your understanding -- is there a</p> <p>4 document that extends the DMI opt-in contract beyond</p> <p>5 the 30-day trial period?</p> <p>6 A. Not to my recollection. I believe it just</p> <p>7 continued under the terms of this agreement.</p> <p>8 Q. What language are you relying upon that this</p> <p>9 automatically continues beyond 30 days?</p> <p>10 A. "If this SOW continues in effect beyond the</p> <p>11 trial period."</p> <p>12 Q. That's it? That's what you're referring to?</p> <p>13 A. Yes, sir.</p> <p>14 Q. Are you aware of the parties negotiating in</p> <p>15 good faith after the termination of the 30-day</p> <p>16 calendar trial period?</p> <p>17 A. I don't understand your question.</p> <p>18 Q. So it looks like this contract is for</p> <p>19 30 days; right? And you negotiated it. It basically</p> <p>20 is saying, if we're going to continue it, we're going</p> <p>21 to negotiate in good faith and we're going to agree to</p> <p>22 the continuation of the contract.</p> <p>23 My question to you is, do you have a memory</p> <p>24 of that actually happening?</p> <p>25 A. I don't understand the contract that way.</p>	<p style="text-align: right;">Page 88</p> <p>1 BY MR. THOMAS:</p> <p>2 Q. Mr. Correia, my name is Will Thomas. I</p> <p>3 represent Direct Energy.</p> <p>4 We've never met before today; correct?</p> <p>5 A. I don't believe so.</p> <p>6 Q. Okay. You said you were stationed in Hawaii</p> <p>7 in the military?</p> <p>8 A. Yes, sir.</p> <p>9 Q. 25th Infantry Division?</p> <p>10 A. Yes.</p> <p>11 Q. What did you do in the 25th ID?</p> <p>12 A. I was 71 Lima. I was stationed with the 4th</p> <p>13 Battalion, 22nd Infantry.</p> <p>14 Q. And what is that 71 Lima?</p> <p>15 A. Admin finance specialist.</p> <p>16 Q. Excellent. Anywhere else that you were</p> <p>17 stationed in --</p> <p>18 A. Out of Fort Jackson.</p> <p>19 Q. Fort Jackson. Was that --</p> <p>20 A. For my basic --</p> <p>21 THE REPORTER: Hang on. Can you give him</p> <p>22 one more rule?</p> <p>23 MR. THOMAS: I will.</p> <p>24 BY MR. THOMAS:</p> <p>25 Q. This is a very unnatural process. I'm just</p>
<p style="text-align: right;">Page 87</p> <p>1 But, after the trial, yes, we did speak with John</p> <p>2 Moran and it did continue.</p> <p>3 Q. And you were involved with that?</p> <p>4 A. Yes, sir.</p> <p>5 Q. And was there an e-mail conversation about</p> <p>6 that?</p> <p>7 A. I believe so.</p> <p>8 Q. Was a new contract signed?</p> <p>9 A. No, sir. It just continued under this,</p> <p>10 because -- from my understanding of it, if this SOW</p> <p>11 continues in effect, either party may terminate -- if</p> <p>12 it continues in effect beyond the trial period --</p> <p>13 which it did.</p> <p>14 Q. Okay.</p> <p>15 A. That's how I understand it.</p> <p>16 MR. McCUE: Sure. I have no further</p> <p>17 questions for now.</p> <p>18 MR. THOMAS: Can we take a break?</p> <p>19 MR. McCUE: Sure.</p> <p>20 THE VIDEOGRAPHER: We are going off the</p> <p>21 record. The time is 12:16.</p> <p>22 (Brief recess.)</p> <p>23 THE VIDEOGRAPHER: We are back on the</p> <p>24 record. The time is 12:24.</p> <p>25 CROSS-EXAMINATION</p>	<p style="text-align: right;">Page 89</p> <p>1 as bad about it as every witness that I've ever</p> <p>2 deposed.</p> <p>3 The court reporter can't take down two people</p> <p>4 talking at once. So I'm going to try to do the best I</p> <p>5 can to not talk over you, and then, if you can, just</p> <p>6 let me finish my question before you answer.</p> <p>7 Is that okay?</p> <p>8 A. Yes.</p> <p>9 Q. Excellent. How long has TMC been in</p> <p>10 existence?</p> <p>11 A. I believe about 15 years or so. I'm not</p> <p>12 quite sure. I think there were some things that were</p> <p>13 done -- honestly, I don't know. I've been working for</p> <p>14 this company for 13 years. My paychecks have said</p> <p>15 "TMC." I don't know if that's TMC I, TMC II.</p> <p>16 So, behind the scenes, I couldn't answer</p> <p>17 specifically how long the company's been in existence.</p> <p>18 Q. So you worked there for 13 years?</p> <p>19 A. Correct.</p> <p>20 Q. And you have an understanding that the</p> <p>21 company existed for some time before you were</p> <p>22 employed?</p> <p>23 A. Correct.</p> <p>24 Q. Okay. And how many employees does TMC have</p> <p>25 today?</p>

<p style="text-align: right;">Page 90</p> <p>1 A. I believe we have somewhere around 300 2 employees. 3 Q. And in 2018? 4 A. 2017, 2018, we probably had closer to 600 or 5 700 employees. 6 Q. During your time at TMC, what is the most 7 number of employees that were employed there? 8 A. Probably over a thousand. 9 Q. When was that? 10 A. I would have to think -- every four-year 11 election cycle, a lot of the work that we do is 12 political in nature -- a lot of market research. So 13 in the presidential cycles, we will bring on a lot of 14 agents for that work. It's seasonal, but it has 15 gotten as high as a thousand employees. 16 Q. And understanding that it's seasonal, how 17 much does the political work that TMC does make up of 18 its overall business? 19 A. A majority of it. That's what I've been led 20 to believe. Political accounts for the majority of 21 our revenue. 22 Q. Okay. And the non-political work, about what 23 percentage does that make up as far as TMC's business? 24 A. I have no idea. 25 Q. Is there any way you can ballpark --</p>	<p style="text-align: right;">Page 92</p> <p>1 Q. I just want to understand. You said it's 2 inbound-centric and you're calling existing customers? 3 A. There's two campaigns. One is inbound; one 4 is outbound. But the mix of the work is -- most of 5 the work we're doing now is inbound in nature. We're 6 not outbound dialing. 7 Q. I understand that. Out of the 8 telecommunications, energy services is just one 9 component of all the telecommunications work that you 10 do; correct? 11 A. Sure, yes. 12 Q. What are some of the other areas that TMC 13 services? 14 A. We service satellite radio, subscription 15 services. So we will do a lot of subscription 16 services for AAA membership. We do subscription 17 services for SiriusXM. We do a lot of work for Starz 18 and Showtime. We do work for Verizon -- Verizon 19 Wireless -- we've done a lot of work for them. 20 Q. Anybody else on the phone side? 21 A. I mean, over the past 13 years, we've had 22 lots of clients. 23 Q. What about on the energy side of the 24 telecommunications? 25 A. On the energy side, we've worked with</p>
<p style="text-align: right;">Page 91</p> <p>1 20 percent, 30 percent, 1 percent? 2 A. I can tell you about headcount. I can't tell 3 you about numbers. I don't know the financials for a 4 lot of the programs, so I can't tell you what the 5 revenue mix is and what percentage of the business it 6 accounts for. 7 But it is one of three primary lines of 8 businesses that we have. The other two being 9 telecommunications and the home services appointment 10 setting that we do -- or market research, really. 11 Q. So three lines of business. Political; 12 correct? 13 A. (Nods head.) 14 Q. Is that a yes? 15 A. Yes. 16 Q. That's the other oddity about this. She 17 can't actually take down a head nod. 18 The other one is telecommunications? 19 A. Correct. 20 Q. Okay. And this Direct Energy campaign would 21 have fallen within the telecommunications; correct? 22 A. It would have fallen under deregulated -- it 23 would've fallen under sales, because our 24 telecommunications campaigns are more inbound-centric. 25 We're calling existing customers.</p>	<p style="text-align: right;">Page 93</p> <p>1 numerous clients over the past 13 years, to my 2 knowledge. When I first came on with TMC, we worked 3 with MXenergy, Santanna. 4 Do you want a list of all the clients that I 5 know? 6 Q. Everyone that you can name. 7 A. Oh, wow. So Santanna, MXenergy -- wow -- 8 Spark Energy, maybe Liberty, Clearview, Direct Energy, 9 of course, the Direct Energy sister companies, CLG and 10 all those other ones. 11 It's probably a shorter list of the companies 12 we haven't worked with over the past 15 years. We've 13 worked with PALMco. It's an extensive list. I can't 14 remember every one that we've worked with. 15 Q. Just Energy, is that another one? 16 A. I believe so, yeah. 17 Q. Smart Energy? 18 A. I don't remember Smart Energy, but, sure. 19 Like I said, I was just one of many managers there. I 20 was not the head energy guy. 21 Q. What about USG&E, is that another one? 22 A. US Gas & Electric, yes. 23 Q. Okay. Out of the telecommunication sales, 24 how much -- do you know what percentage that the 25 energy services makes up out of the telecommunications</p>

24 (Pages 90 - 93)

<p style="text-align: right;">Page 94</p> <p>1 tier of business?</p> <p>2 A. No clue. It wasn't our major revenue driver</p> <p>3 at TMC. Most of our revenue came from other clients,</p> <p>4 such as Kipany.</p> <p>5 Q. What do they do?</p> <p>6 A. Kipany is a broker. And we have had most of</p> <p>7 our eggs in the Kipany basket for over a decade. So</p> <p>8 much so that they have their own parking spaces.</p> <p>9 But -- yeah -- the majority of the work has</p> <p>10 not been deregulated energy in the past five,</p> <p>11 six years, to my knowledge, and my focus -- my focus</p> <p>12 has not been energy.</p> <p>13 Q. When TMC is doing this telemarketing sales</p> <p>14 at any given time, they're doing this for multiple</p> <p>15 clients at the same time.</p> <p>16 Is that fair?</p> <p>17 A. Yeah, that's a fair assumption. I would</p> <p>18 assume so.</p> <p>19 Q. Okay. If you walked into the TMC</p> <p>20 headquarters, it's not just the Direct Energy people.</p> <p>21 It's other agents that are servicing other clients as</p> <p>22 well; correct?</p> <p>23 A. Yeah. Space is a price commodity, and there</p> <p>24 are campaigns that are running simultaneous on the</p> <p>25 same floor.</p>	<p style="text-align: right;">Page 96</p> <p>1 So we have a lot of agents that are just</p> <p>2 sitting there idle. And our occupancy is very low,</p> <p>3 which costs money. So, for my department, I'll use</p> <p>4 political, for example, as a way to -- as a campaign</p> <p>5 to put agents in there so we can generate revenue.</p> <p>6 Q. But that's a TMC-driven decision; correct?</p> <p>7 A. Yes, sir. Yes, sir.</p> <p>8 Q. It's not a client-driven decision; correct?</p> <p>9 A. No, sir. It can be to some point. It</p> <p>10 depends on the contractual limitations of clients.</p> <p>11 Some clients want dedicated agents and they don't want</p> <p>12 us to utilize those agents for other campaigns.</p> <p>13 We do have campaigns that are set up in clean</p> <p>14 rooms, for example, where they could not even if they</p> <p>15 wanted to.</p> <p>16 Q. Okay. But that's something the client would</p> <p>17 actually have to ask TMC; correct?</p> <p>18 A. It's part of the contract, yes, sir.</p> <p>19 Q. Okay. And then TMC would then have to agree,</p> <p>20 "Hey, these agents are going to work exclusively with</p> <p>21 you"?</p> <p>22 A. Yes, sir.</p> <p>23 Q. Okay. So in terms of the assignments of the</p> <p>24 agents to the client, it's a TMC decision that they</p> <p>25 agree to do with the client?</p>
<p style="text-align: right;">Page 95</p> <p>1 Q. Will an agent sometimes work on one campaign</p> <p>2 and then, on another day, work on a different campaign</p> <p>3 for a different client?</p> <p>4 A. Yeah, absolutely.</p> <p>5 Q. Does that happen frequently?</p> <p>6 A. That does happen frequently, especially on</p> <p>7 the energy side, where the campaigns typically may not</p> <p>8 have the hours you need on them. Agents will get</p> <p>9 their hours by working other campaigns.</p> <p>10 And we encourage that across all of the</p> <p>11 programs in our company. We want our agents to hit</p> <p>12 40 hours and, you know, make their paycheck and come</p> <p>13 back the next week. So we try to encourage them to</p> <p>14 get those hours on other campaigns.</p> <p>15 Q. How is it that they go and get those hours on</p> <p>16 the other campaigns? Is it something the agent signs</p> <p>17 up, that they're working on Direct Energy for these</p> <p>18 days, or is that something that's provided to them?</p> <p>19 A. I think that's something that management</p> <p>20 would provide to them. The managers know the</p> <p>21 availability from campaign to campaign.</p> <p>22 For example, I use political campaigns as a</p> <p>23 resting place for my agents, because I can't predict</p> <p>24 when I'm going to get a call in home services. I</p> <p>25 don't know when someone's plumbing is going to go bad.</p>	<p style="text-align: right;">Page 97</p> <p>1 A. Correct.</p> <p>2 Q. Okay. What are some of the services that TMC</p> <p>3 provides its customers?</p> <p>4 A. Outbound, inbound, digital. We're trying to</p> <p>5 get into more big data analysis and sentiment analysis</p> <p>6 and lead segmentation. And as the business -- as</p> <p>7 director of business development, I'm trying to steer</p> <p>8 the company into a different horizon -- voices --</p> <p>9 Adodo -- and we need to stay competitive with what's</p> <p>10 out there in the market, so we're transforming into a</p> <p>11 more digital play.</p> <p>12 Q. What's the digital business that you're</p> <p>13 talking about?</p> <p>14 A. The digital business is advocacy.</p> <p>15 Q. What does that mean?</p> <p>16 A. Political advocacy.</p> <p>17 Q. Like --</p> <p>18 A. Political consulting. Things like static</p> <p>19 ads, video ads. Getting people to change their mind</p> <p>20 about topics and getting them to vote.</p> <p>21 Q. What's encompassed in, you said, outbound?</p> <p>22 A. Outbound would be any campaign where agents</p> <p>23 are initiating the phone call.</p> <p>24 Q. What about lead generation? How does that</p> <p>25 play into outbound campaigns?</p>

25 (Pages 94 - 97)

<p style="text-align: right;">Page 98</p> <p>1 A. Lead generation? It depends on the client. 2 Typically, the client's either providing the data or 3 we're providing the data. 4 Q. So that is a service that you offer the 5 client, is to go provide them data? 6 A. Yes, sir. That is one of the things that we 7 offer. We can procure leads. 8 Q. Is that something that TMC does organically, 9 or is that something that TMC exclusively outsources 10 or uses a vendor for? 11 A. We typically vend that sort of stuff. We 12 don't have the capacity to generate our own leads. 13 We've toyed with creating our own digital 14 platforms. We have a web page that we tried to drive 15 traffic to to generate opt-in leads. It hasn't worked 16 really well. We can't scale it. So we rely on 17 vendors. 18 Q. And who goes and identifies those vendors 19 that you procure leads from? 20 A. That's Tyson and George. We used DMI because 21 DMI was a previous client and we had experience with 22 them and their leads. DMI is -- you've seen them, but 23 you don't know who they are. If you've ever seen an 24 ad pop up trying to get you to go back to school, 25 that's DMI.</p>	<p style="text-align: right;">Page 100</p> <p>1 DMI? 2 A. Yes, but not in relationship to this. I 3 spoke with DMI when they were clients and I was 4 testing out their campaign and stuff like that. But 5 not in -- I never spoke with anyone at DMI about these 6 leads. 7 Q. So in the case of Direct Energy, DMI, 8 Silverman -- what's the third one? Bright -- the 9 other vendor? 10 A. Brightbox. 11 Q. Yeah. Those were vendors -- 12 A. I assume that we use Brightbox for this. I 13 don't know. 14 Q. But those would all be vendors that TMC 15 selected; correct? 16 A. Yes, sir. 17 Q. And then they went to Direct Energy and said, 18 "We want to use these people"? 19 A. Correct. Those were vendors brought on by 20 Tyson, yes. 21 Q. Do you have any understanding as to how lead 22 generation works? 23 A. Yeah. From what I understand -- I was on a 24 conference call with Tyson -- and I believe it was one 25 of the guys at Brightbox, where he was trying to</p>
<p style="text-align: right;">Page 99</p> <p>1 They have the capacity of, as soon as you 2 respond to it, an agent is, like, calling you within a 3 minute to try to sign you up for Phoenix online or 4 whatever it may be. 5 So we were very educated about their ability 6 to provide leads for us. That's why I felt 7 comfortable in going with them initially. 8 Q. And you're correct. I've never heard of DMI 9 before this. 10 Are they a big player in this space? 11 A. Uh-huh. 12 Q. Are they the biggest player in this space? 13 A. I don't know that, but I know they are a 14 player. I was told that they were one of the bigger. 15 Q. Do you know how many other bigger ones there 16 are? 17 A. No clue. 18 Q. Would you consider them one of the top-tier 19 lead generators? 20 A. That's what I was told by Tyson. 21 Q. Any other basis for that other than Tyson? 22 A. Just previous work experience that we've had 23 with them. They were one of our clients. They were a 24 pretty good client, so we trusted them. 25 Q. Have you ever spoken with anybody over at</p>	<p style="text-align: right;">Page 101</p> <p>1 explain how they get the leads. 2 They basically go after people that are 3 trying to make money, save money, or win money online. 4 They target those three segments and offer them 5 something to get their information. It's basically 6 buried in the terms and conditions, all of the people 7 that can be contacted on behalf... 8 So depending on the language of the lead, it 9 could be an exclusive opt-in to just Direct Energy, 10 and it's, like, hey, this is for Direct Energy. Or it 11 could be a little looser, where it's, like, here's -- 12 it's for Direct Energy and all of our partners. 13 Right? 14 So that's where I think it can get -- it can 15 get gray for the customer, because they don't remember 16 all of the other people that were listed on that 17 opt-in. 18 Q. When you say "gray," you mean it's a matter 19 of recollection? 20 A. Recollection. Correct. 21 Q. This is a service that TMC offers to clients 22 like Direct Energy, Verizon, USG&E -- "Hey, we can 23 provide you leads." Correct? 24 A. Typically, on the energy side, it's more -- 25 it's more standard on energy than anywhere else. Most</p>

<p style="text-align: right;">Page 102</p> <p>1 of our other campaigns, clients provide us leads, but</p> <p>2 it's a different type of campaign, so --</p> <p>3 But on the energy side, it's not my</p> <p>4 understanding that many clients will provide a call</p> <p>5 list on an outbound campaign on energy. I just</p> <p>6 haven't seen too many of those.</p> <p>7 Q. On the energy side --</p> <p>8 A. Yeah.</p> <p>9 Q. -- TMC is not only procuring and providing</p> <p>10 leads just for Direct Energy; correct?</p> <p>11 A. True.</p> <p>12 Q. It's doing it for the majority of its energy</p> <p>13 service clients?</p> <p>14 A. Correct; yes, sir.</p> <p>15 Q. And that's another service that you guys</p> <p>16 offer?</p> <p>17 A. Yes, sir.</p> <p>18 Q. I want to talk about your facility. You said</p> <p>19 there's a facility here in Florida. It was at 1043 --</p> <p>20 A. Upsala.</p> <p>21 Q. -- Upsala.</p> <p>22 Does TMC have any other facilities?</p> <p>23 A. Not any longer. At the time, we had two</p> <p>24 buildings, which was 4395 St. Johns Parkway, which was</p> <p>25 our corporate building. That has been -- I don't even</p>	<p style="text-align: right;">Page 104</p> <p>1 Q. Have to badge in. Where do they get their</p> <p>2 badges?</p> <p>3 A. From our receptionist at the front desk, and</p> <p>4 you need to be buzzed in to get in.</p> <p>5 Q. Right. Basically, if Direct Energy is going</p> <p>6 to visit the facility, they have to prearrange travel;</p> <p>7 correct?</p> <p>8 A. Yes, sir.</p> <p>9 Q. And they have to ask you guys; correct?</p> <p>10 A. Yes, sir.</p> <p>11 Q. Say, "Hey, we're coming into town. We'd like</p> <p>12 to come see the facility." Correct?</p> <p>13 A. Yes, sir.</p> <p>14 Q. They don't have a right to just drop in</p> <p>15 unannounced and start walking through your facility;</p> <p>16 correct?</p> <p>17 A. I think they could. We had an open-door</p> <p>18 policy with them, where they were always open, but</p> <p>19 that was never -- that's not how the relationship was</p> <p>20 structured. Direct Energy always let us know what</p> <p>21 their travel plans were ahead.</p> <p>22 Q. That's not how it was structured; correct?</p> <p>23 A. Correct.</p> <p>24 Q. And that's not what they did; correct?</p> <p>25 A. No. We always knew when they were coming</p>
<p style="text-align: right;">Page 103</p> <p>1 know. This is my guess. From what I've heard, I</p> <p>2 think that's been wrapped up as part of the bankruptcy</p> <p>3 with the company. We just -- one day, we saw people</p> <p>4 moving stuff out of the building.</p> <p>5 Q. Larry, you're under oath today. I don't want</p> <p>6 you guessing. I want to know your knowledge. I want</p> <p>7 you to be able to testify honestly and truthfully that</p> <p>8 these are the things and these are the facts I know.</p> <p>9 So that's just kind of an another instruction</p> <p>10 moving forward. I want to know what you know.</p> <p>11 A. Sure.</p> <p>12 Q. That structure -- TMC or its receiver owns</p> <p>13 that structure; is that correct?</p> <p>14 A. The 1043?</p> <p>15 Q. Correct.</p> <p>16 A. Yes, I believe so.</p> <p>17 Q. Direct Energy has no ownership interest in</p> <p>18 that?</p> <p>19 A. Not to my knowledge.</p> <p>20 Q. To your knowledge, Direct Energy doesn't have</p> <p>21 a key to that facility; correct?</p> <p>22 A. Not to my knowledge.</p> <p>23 Q. Direct Energy doesn't have a security code to</p> <p>24 that facility; correct?</p> <p>25 A. No. You guys have to badge in.</p>	<p style="text-align: right;">Page 105</p> <p>1 ahead of their arrival.</p> <p>2 Q. Direct Energy has no financial ownership</p> <p>3 interest or ownership into TMC; correct?</p> <p>4 A. Not that I'm aware of.</p> <p>5 Q. No stock that's held; correct?</p> <p>6 A. No, sir.</p> <p>7 Q. There's no loans that Direct Energy has made</p> <p>8 to TMC; correct?</p> <p>9 A. I have no idea.</p> <p>10 Q. Okay. Does any customer have a financial</p> <p>11 interest in TMC?</p> <p>12 A. Any customer?</p> <p>13 Q. Yeah.</p> <p>14 A. Not to my knowledge.</p> <p>15 Q. Right. To your knowledge, it's TMC,</p> <p>16 wholly-owned, going into receivership?</p> <p>17 A. Correct.</p> <p>18 Q. The technology that TMC employees -- for</p> <p>19 example, the server -- that's something that belongs</p> <p>20 to TMC; correct?</p> <p>21 A. Yes. The server belongs to TMC, yes.</p> <p>22 Q. TMC owns that server?</p> <p>23 A. Once again, I'm speaking outside of my</p> <p>24 knowledge. I don't know what we own, what we lease,</p> <p>25 what is on site, what's in the cloud.</p>

<p style="text-align: right;">Page 106</p> <p>1 Q. Right. That's fair. Direct Energy does not</p> <p>2 own that server; correct?</p> <p>3 A. No, no.</p> <p>4 Q. The computers that TMC uses, those are TMC</p> <p>5 computers; correct?</p> <p>6 A. Correct.</p> <p>7 Q. Those are not Direct Energy computers?</p> <p>8 A. No.</p> <p>9 Q. Direct Energy doesn't even have a say as to</p> <p>10 what computer we prefer that you guys use?</p> <p>11 A. No longer. They never had a say on energy.</p> <p>12 But on home services, Direct Energy did dictate</p> <p>13 headsets, monitors -- minimum spec requirements for</p> <p>14 computers to meet the network requirements for the</p> <p>15 ethernet connections we had with you guys.</p> <p>16 Q. We've spoken a lot today about home services.</p> <p>17 I just want to be -- I want to make sure I have a</p> <p>18 complete understanding of this.</p> <p>19 In your mind, that is something entirely</p> <p>20 different than the telesales; correct?</p> <p>21 A. Yes, sir.</p> <p>22 Q. Physically, they're in a totally different</p> <p>23 spot?</p> <p>24 A. Different spot. Like, I'm in a different</p> <p>25 building. Like, energy was run up front in 4395, with</p>	<p style="text-align: right;">Page 108</p> <p>1 Q. Direct Energy never paid you directly?</p> <p>2 A. No, sir.</p> <p>3 Q. You don't get any type of 1099 or W-2 from</p> <p>4 them?</p> <p>5 A. No.</p> <p>6 Q. No other kind of benefit? All of your</p> <p>7 compensation comes from TMC?</p> <p>8 A. Correct, sir.</p> <p>9 Q. And that's true for, to your knowledge,</p> <p>10 everybody else at TMC; correct?</p> <p>11 A. To the best of my knowledge, yes.</p> <p>12 Q. On the teleservices side, Direct Energy</p> <p>13 doesn't tell TMC what computers to use; correct?</p> <p>14 A. No.</p> <p>15 Q. They don't tell them what phones to use;</p> <p>16 correct?</p> <p>17 A. No.</p> <p>18 Q. They don't tell them what headsets to use;</p> <p>19 correct?</p> <p>20 A. No.</p> <p>21 Q. The furniture that the agent is sitting on,</p> <p>22 that's TMC furniture?</p> <p>23 A. Yes, sir.</p> <p>24 Q. That's not Direct Energy furniture?</p> <p>25 A. No, sir. It's not Direct Energy furniture.</p>
<p style="text-align: right;">Page 107</p> <p>1 Robert and George and that gang. I was in a</p> <p>2 completely different building with home services. My</p> <p>3 hands were full.</p> <p>4 I mean, I am the face for a lot of this stuff</p> <p>5 with e-mails just because I helped launch the</p> <p>6 campaigns. But the day-to-day operation of energy, I</p> <p>7 have no clue.</p> <p>8 Q. And on the home services, you had a different</p> <p>9 point of contact over there?</p> <p>10 A. Absolutely, yeah. That was actually Carter</p> <p>11 and Amie Spence. Those were my two primary contacts.</p> <p>12 One for retail and one for franchise.</p> <p>13 Q. Direct Energy, to your knowledge, doesn't</p> <p>14 even own those home services anymore?</p> <p>15 A. No longer. Those were divested to Authority</p> <p>16 Brands, I believe, last year or the year before.</p> <p>17 Q. And you have a completely different contact</p> <p>18 now?</p> <p>19 A. Yeah. I work with Amie Spence now. She was</p> <p>20 brought -- she migrated over with the work to</p> <p>21 Authority Brands -- her and Ashley Carter. I think</p> <p>22 Ashley is still around.</p> <p>23 Q. And you've never been a Direct Energy</p> <p>24 employee; correct?</p> <p>25 A. No, sir.</p>	<p style="text-align: right;">Page 109</p> <p>1 Q. Are you aware as to whether or not TMC has a</p> <p>2 license to operate as a telemarketer in certain</p> <p>3 states?</p> <p>4 A. Yes. That information was provided to us by</p> <p>5 Patrick Crocker, and he sent out a document which was</p> <p>6 updated periodically that said, "Here's our</p> <p>7 certifications. Here's the cert numbers."</p> <p>8 So, yes -- yeah.</p> <p>9 Q. When TMC goes to get those licenses, that's</p> <p>10 something that TMC does on its own; correct?</p> <p>11 A. Yes.</p> <p>12 Q. Or with its lawyer; correct?</p> <p>13 A. Yeah. That's done by Patrick Crocker.</p> <p>14 Q. It's not anything that it has its customers</p> <p>15 do; right?</p> <p>16 A. No, no.</p> <p>17 Q. They're the customer?</p> <p>18 A. Correct.</p> <p>19 Q. You're servicing the customer; correct?</p> <p>20 A. Yeah. The only thing we require from the</p> <p>21 customer is probably a SANs number.</p> <p>22 Q. What's a SANs number?</p> <p>23 A. That's just the number so we can do your DNC</p> <p>24 checking.</p> <p>25 Q. That makes sense.</p>

<p style="text-align: right;">Page 110</p> <p>1 Direct Energy never participated in any type</p> <p>2 of licensing for TMC; correct?</p> <p>3 A. No, sir.</p> <p>4 Q. There's no license that you have that's</p> <p>5 specific to handling Direct Energy telemarketing</p> <p>6 calls; correct?</p> <p>7 A. We have nothing that's specific to the</p> <p>8 client. It's all specific to the company.</p> <p>9 Q. And the reason -- you say, it's not specific</p> <p>10 to the clients -- specific to the company -- it's</p> <p>11 because TMC is the telemarketer; right?</p> <p>12 A. Yes.</p> <p>13 Q. That's -- the value-add for all of your</p> <p>14 customers is your ability to do telemarketing;</p> <p>15 correct?</p> <p>16 A. I guess so. That's the service that we</p> <p>17 provide. I wouldn't necessarily say that's our</p> <p>18 value-add, but, yeah.</p> <p>19 Q. So what is your value-add?</p> <p>20 A. The value-add that I feel that TMC brings is</p> <p>21 that we -- we have a lot of experience that we can</p> <p>22 leverage on behalf of our clients to meet their goals.</p> <p>23 That's a value-add. How we go by doing that is</p> <p>24 through these different services.</p> <p>25 Q. What's that experience?</p>	<p style="text-align: right;">Page 112</p> <p>1 A. Yes.</p> <p>2 Q. And your customers are relying upon your</p> <p>3 experience and expertise in telemarketing to engage in</p> <p>4 certain campaigns that you guys run; right?</p> <p>5 A. Sure. Your business is energy and mine is</p> <p>6 telemarketing.</p> <p>7 Q. Fair enough. I want to talk about the agents</p> <p>8 that you guys use.</p> <p>9 A. Sure.</p> <p>10 Q. How do they get hired?</p> <p>11 A. They -- we place ads for internal or external</p> <p>12 opportunities. They're vetted through human</p> <p>13 resources. They go through training.</p> <p>14 Q. That's all TMC; right?</p> <p>15 A. Yes, sir.</p> <p>16 Q. So looking at the applications; right?</p> <p>17 A. (Nods head.)</p> <p>18 Q. Is that a yes?</p> <p>19 A. Correct.</p> <p>20 Q. Identifying the people you want to bring and</p> <p>21 interview, those are the types of TMC functions;</p> <p>22 right?</p> <p>23 A. Yes.</p> <p>24 Q. Sitting and actually interviewing all of</p> <p>25 these people, that's another TMC function; right?</p>
<p style="text-align: right;">Page 111</p> <p>1 A. Which experience?</p> <p>2 Q. Well, you said that TMC has experience, and</p> <p>3 that contributes towards its value-add.</p> <p>4 A. Correct.</p> <p>5 Q. So I want to understand. So what's the</p> <p>6 experience that TMC has to have a value-add for its</p> <p>7 customers?</p> <p>8 A. I think it would be the experience of its</p> <p>9 people -- the people that are working there in the</p> <p>10 trenches, taking the phone calls, selling the</p> <p>11 customers. They're the ones that the business is</p> <p>12 built on. So we've got a strong group of people.</p> <p>13 Q. Every year, how many campaigns do you think</p> <p>14 TMC does?</p> <p>15 A. Hundreds or more.</p> <p>16 Q. Hundreds or more over more than a decade;</p> <p>17 correct?</p> <p>18 A. Oh, yeah. On political seasons, we will run</p> <p>19 typically 50 or more independent campaigns a day on</p> <p>20 political.</p> <p>21 Q. So you would say that you guys are experts in</p> <p>22 telemarketing; correct?</p> <p>23 A. Yes.</p> <p>24 Q. And you have that expert experience that your</p> <p>25 customers don't; right?</p>	<p style="text-align: right;">Page 113</p> <p>1 A. Yes.</p> <p>2 Q. And then ultimately training those people is</p> <p>3 another TMC function; right?</p> <p>4 A. Yes.</p> <p>5 Q. Okay. The customer has no responsibility in</p> <p>6 your organization as to hiring your agents; correct?</p> <p>7 A. No. Typically, they don't.</p> <p>8 Q. You say "typically." Is there an atypical</p> <p>9 example?</p> <p>10 A. There are some customers that provide</p> <p>11 criteria for the client -- for the candidates that</p> <p>12 they want to be hired -- so they will provide minimum</p> <p>13 requirements. Do they need a high school diploma? Do</p> <p>14 they need a college degree? Do they need to be</p> <p>15 background-checked? All these different things, so</p> <p>16 the client does have some influence over that process,</p> <p>17 yes.</p> <p>18 Q. But those are still a very general criteria;</p> <p>19 correct?</p> <p>20 A. Yeah.</p> <p>21 Q. Ultimately, TMC has the decision, I'm hiring</p> <p>22 this person. I'm not hiring this person. Correct?</p> <p>23 A. Yes, sir.</p> <p>24 Q. This person can have all of the criteria that</p> <p>25 the client wants, but I still may not hire them</p>

<p style="text-align: right;">Page 114</p> <p>1 because I have my own independent reason; right?</p> <p>2 A. Hopefully that's not happening.</p> <p>3 Q. But it could?</p> <p>4 A. Yes.</p> <p>5 Q. That's how it works; right?</p> <p>6 A. Yes.</p> <p>7 Q. TMC is responsible for hiring, interviewing,</p> <p>8 training up its own agents; right?</p> <p>9 A. Yes.</p> <p>10 Q. How are those agents paid?</p> <p>11 A. Typically, hourly plus bonus.</p> <p>12 Q. What's the bonus?</p> <p>13 A. It varies from campaign to campaign.</p> <p>14 THE VIDEOGRAPHER: Counsel, we have five</p> <p>15 minutes remaining on this media.</p> <p>16 BY MR. THOMAS:</p> <p>17 Q. I've got a couple questions. Then we can</p> <p>18 maybe take a break. Is that fair?</p> <p>19 A. Sure.</p> <p>20 Q. Again, it's not a marathon or a race. I just</p> <p>21 need you to -- we can take a break when we need to.</p> <p>22 A. I'm okay with continuing through.</p> <p>23 Q. We'll finish with these couple questions.</p> <p>24 Then we'll take a break.</p> <p>25 Direct Energy didn't pay per head for each</p>	<p style="text-align: right;">Page 116</p> <p>1 Q. Customers didn't have a say in the promotion</p> <p>2 of your agents; right?</p> <p>3 A. No, sir.</p> <p>4 Q. What about performing reviews of the agents?</p> <p>5 A. No. That was in-house as well.</p> <p>6 Q. That's something that you guys did</p> <p>7 periodically?</p> <p>8 A. Yes, sir.</p> <p>9 Q. On the training for the agents -- I'm going</p> <p>10 to show you what's been produced by TMC. This is</p> <p>11 Exhibit 9.</p> <p>12 MR. THOMAS: Matt, this is the</p> <p>13 disposition you guys handed us.</p> <p>14 (Exhibit 9 was marked for</p> <p>15 identification.)</p> <p>16 BY MR. THOMAS:</p> <p>17 Q. So take that. If you can just take a minute</p> <p>18 to look through it?</p> <p>19 A. I'm familiar with this document.</p> <p>20 Q. And how is it that you're familiar with this</p> <p>21 document?</p> <p>22 A. I helped create it.</p> <p>23 Q. Okay. That training that you created, that's</p> <p>24 about --</p> <p>25 A. I didn't create it. I helped create it.</p>
<p style="text-align: right;">Page 115</p> <p>1 agent on its campaign; right?</p> <p>2 A. I don't believe so, no.</p> <p>3 Q. Okay. Your understanding was, Direct Energy</p> <p>4 paid for the sales that TMC closed; right?</p> <p>5 A. Correct.</p> <p>6 Q. So Direct Energy paid for the sales that TMC</p> <p>7 closed; is that right?</p> <p>8 A. Yes, yes.</p> <p>9 Q. If there were five people working on that</p> <p>10 campaign or 20 people working on that campaign, the</p> <p>11 pay compensation was still the same; right?</p> <p>12 A. Yeah. It's per sale. It's typically per</p> <p>13 sale on energy campaigns.</p> <p>14 MR. McCUE: Let's take a break.</p> <p>15 THE VIDEOGRAPHER: We are going off the</p> <p>16 record. This is the end of media unit two.</p> <p>17 The time is 12:54.</p> <p>18 (Brief recess.)</p> <p>19 THE VIDEOGRAPHER: We are back on the</p> <p>20 record. This is the beginning of media unit</p> <p>21 three. The time is 1:02.</p> <p>22 BY MR. THOMAS:</p> <p>23 Q. Mr. Correia, when it came to promoting</p> <p>24 agents, was that a TMC function?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 117</p> <p>1 Q. You helped create it. Who else helped create</p> <p>2 it?</p> <p>3 A. This fell to Mary LaPorte.</p> <p>4 Q. Who is Mary LaPorte?</p> <p>5 A. She was the person that was heading up energy</p> <p>6 most of the time, but she hasn't been with us for a</p> <p>7 couple of years.</p> <p>8 This disposition training, I believe, is very</p> <p>9 dated. This is -- wow -- it's at least 10-years-old.</p> <p>10 I don't know. The only reason I'm familiar with this</p> <p>11 is because we have a new trainer that is responsible</p> <p>12 for redesigning all of this stuff, and I just sat with</p> <p>13 her yesterday and went over this specific document.</p> <p>14 Q. Good timing.</p> <p>15 A. Yeah.</p> <p>16 Q. Is that training -- is that the training that</p> <p>17 your agents would have gone through?</p> <p>18 A. This is the training that our agents would go</p> <p>19 through today.</p> <p>20 Q. And then you're in the process of --</p> <p>21 A. Of updating it.</p> <p>22 Q. What is disposition training?</p> <p>23 A. For me, it's like one of the most important</p> <p>24 parts of the call. It tells other departments how to</p> <p>25 handle the call operationally. It's how -- it's</p>

<p style="text-align: right;">Page 118</p> <p>1 ranking the call for what it was.</p> <p>2 If it was an answering machine, we tell our</p> <p>3 teams that it was an answering machine. If it was a</p> <p>4 "do not call," we let our internal teams know that it</p> <p>5 was a "do not call."</p> <p>6 However the agent dispositions the call</p> <p>7 impacts how that lead is treated internally.</p> <p>8 Q. That's a critical function for the agent?</p> <p>9 A. Correct, correct. That can cause a lot of</p> <p>10 troubles if the agent does do their job correctly.</p> <p>11 Q. Right. And that's a function that TMC takes</p> <p>12 on to make sure their agents can perform; correct?</p> <p>13 A. Yes, sir.</p> <p>14 Q. That's not something that the customer does;</p> <p>15 right?</p> <p>16 A. No.</p> <p>17 Q. Earlier, you talked a little bit about some</p> <p>18 sort of, like, campaign or product-specific training</p> <p>19 that wasn't necessarily TMC training.</p> <p>20 What is that?</p> <p>21 A. There's certain -- all campaigns, when they</p> <p>22 come on board, there's a script, there's rebuttals,</p> <p>23 there's frequently asked questions. So those types of</p> <p>24 materials usually come from the client on how they</p> <p>25 want to structure the sales call or the call flow.</p>	<p style="text-align: right;">Page 120</p> <p>1 and Ashley Carter.</p> <p>2 So there's a lot of times where -- or not a</p> <p>3 lot of times -- there were times where training was</p> <p>4 facilitated by the client.</p> <p>5 Q. What about energy services?</p> <p>6 A. Energy services, I can't recall. Not with</p> <p>7 Direct Energy. I believe with some clients, like Just</p> <p>8 Energy and a few others. There are instances that I</p> <p>9 can think of where the client did the training, but I</p> <p>10 can't think of any with Direct Energy.</p> <p>11 Q. But the training that that client is</p> <p>12 providing, again, is still focused on their product;</p> <p>13 correct?</p> <p>14 A. It's complete training, soup to nuts,</p> <p>15 Sales 101 -- everything.</p> <p>16 Q. Okay. But things like the disposition and</p> <p>17 the compliance training, those are things that you're</p> <p>18 responsible for; correct?</p> <p>19 A. Once again, it depends on the campaign.</p> <p>20 Q. Fair enough. What about on the energy</p> <p>21 services campaigns?</p> <p>22 A. On the energy services campaigns, it depends</p> <p>23 on the client. So we have had clients that have done</p> <p>24 soup-to-nuts training for us and we're spectators in</p> <p>25 the class.</p>
<p style="text-align: right;">Page 119</p> <p>1 So that type of information -- we will</p> <p>2 facilitate the training -- but, a lot of times, the</p> <p>3 training material is provided to us.</p> <p>4 Q. And the reason the client is providing that</p> <p>5 material is because it's their product that you guys</p> <p>6 are selling?</p> <p>7 A. Correct.</p> <p>8 Q. So your agents need to understand how, for</p> <p>9 example, deregulated energy works; right?</p> <p>10 A. Yes, sir.</p> <p>11 Q. Or if they're selling Verizon cell phone</p> <p>12 plans, they need to understand the different types of</p> <p>13 Verizon cell phones plans that are out there; right?</p> <p>14 A. Correct.</p> <p>15 Q. So the training that your customers are</p> <p>16 providing you guys is to better understand the product</p> <p>17 that the agents are selling; right?</p> <p>18 A. It depends on the campaign. We have other</p> <p>19 campaigns where the training is conducted exclusively</p> <p>20 by clients, so it could be either/or.</p> <p>21 For example, with Direct Energy, we had a mix</p> <p>22 of both. On the home services side, typically,</p> <p>23 Christina Thurik and other L&D trainers would come in</p> <p>24 and provide training for us. The first training was</p> <p>25 done by Lance -- I think his last name is DePaula --</p>	<p style="text-align: right;">Page 121</p> <p>1 There are other clients, such as Direct</p> <p>2 Energy, where I don't recall DE providing any of</p> <p>3 that -- that core energy training material. There</p> <p>4 were supplemental things that were provided --</p> <p>5 territory sheets -- just other things -- other</p> <p>6 additional training things were provided to us.</p> <p>7 Q. What do you recall in terms of any training</p> <p>8 that Direct Energy provided?</p> <p>9 A. In regards to -- what are we speaking about?</p> <p>10 Are we speaking about just energy or in general?</p> <p>11 Q. Just energy services.</p> <p>12 A. Okay. Energy services? Direct Energy</p> <p>13 provided a landing page with all the forms, paperwork,</p> <p>14 and processes that we needed to adhere to. That was</p> <p>15 pretty much the extent of what was provided to us from</p> <p>16 Direct Energy.</p> <p>17 Q. But Direct Energy, for energy services, to</p> <p>18 your recollection, it did not provide the compliance</p> <p>19 or disposition-type training; correct?</p> <p>20 A. I can't recall. Honestly, I can't recall. I</p> <p>21 don't believe so, but...</p> <p>22 Q. As we sit here today, you're not aware of</p> <p>23 compliance training for energy services that my client</p> <p>24 provided your agents?</p> <p>25 A. Off the top of my head, I can't think of</p>

<p style="text-align: right;">Page 122</p> <p>1 anything.</p> <p>2 Q. If you can, I want to go to Tab 4 in your</p> <p>3 notebook. This was Exhibit 8.</p> <p>4 A. Tab 4?</p> <p>5 Q. Yes.</p> <p>6 A. I think we're already on --</p> <p>7 Q. We actually may already be there.</p> <p>8 A. Yeah.</p> <p>9 Q. You said earlier that you're familiar with</p> <p>10 this document?</p> <p>11 A. Yeah.</p> <p>12 Q. How is it that you're familiar with it?</p> <p>13 A. I helped negotiate it with Lauren -- I can't</p> <p>14 remember her last name -- from DE procurement. It was</p> <p>15 Isaac Matute and Lauren -- I can't -- McClendon, I</p> <p>16 believe, was her last name.</p> <p>17 Q. So under the services that -- tell me if I'm</p> <p>18 wrong here -- the services that TMC was to offer was</p> <p>19 to provide a test campaign with DMI Partners on</p> <p>20 co-registration opt-in leads; is that correct?</p> <p>21 A. Yes, sir.</p> <p>22 Q. What are co-registration opt-in leads?</p> <p>23 A. I believe, in this instance, co-registration</p> <p>24 means that there were multiple names listed on the</p> <p>25 lead. So they were registering for a lead for Direct</p>	<p style="text-align: right;">Page 124</p> <p>1 can pop up any message on any website through their</p> <p>2 affiliates.</p> <p>3 So you would be on the internet, browsing,</p> <p>4 and you would have a popup that says, "Hey, do you</p> <p>5 want to win the thing? Enter your information here."</p> <p>6 That's how they generate opt-in leads. It could be on</p> <p>7 a specific website that you're visiting. It could be</p> <p>8 just through web searches. It could be anything. It</p> <p>9 depends on the network of providers that you're using</p> <p>10 online.</p> <p>11 Q. So, in your mind, in your understanding,</p> <p>12 opt-in, it refers to the lead of the person that wants</p> <p>13 to hear about Direct Energy's services or someone</p> <p>14 else's services, as well as consent language that</p> <p>15 would allow TMC or somebody else to contact them?</p> <p>16 A. Yes, sir.</p> <p>17 Q. Okay.</p> <p>18 A. That's my understanding.</p> <p>19 Q. On the third bullet, it says, "TrustedForm</p> <p>20 certificates will provide independent proof of consent</p> <p>21 of the opt-in by the consumer for compliance</p> <p>22 purposes."</p> <p>23 Did I read that correctly?</p> <p>24 A. Yes, sir.</p> <p>25 Q. What is a TrustedForm certificate?</p>
<p style="text-align: right;">Page 123</p> <p>1 Energy, as well as ABC Company.</p> <p>2 Q. Okay.</p> <p>3 A. I believe.</p> <p>4 Q. For example, there could be a marketing</p> <p>5 partner, and then Direct Energy would be one of those</p> <p>6 marketing partners?</p> <p>7 A. Correct.</p> <p>8 Q. If you can go to where it says, "Program</p> <p>9 offering," I want to go to the second bullet. "DMI</p> <p>10 will provide co-registration leads for potential</p> <p>11 customers who have opted in through an online</p> <p>12 advertisement to receive a call regarding the specific</p> <p>13 offers determined by Direct Energy for the market in</p> <p>14 question."</p> <p>15 Did I read that correctly?</p> <p>16 A. Yes, sir.</p> <p>17 Q. The "opt in through online advertisement,"</p> <p>18 what is that?</p> <p>19 A. That is the lead -- that is the</p> <p>20 co-registration lead.</p> <p>21 Q. Okay. Is it just a lead or is there consent</p> <p>22 language associated with that lead?</p> <p>23 A. There is consent language associated with the</p> <p>24 lead. So DMI has a network of publishers or just</p> <p>25 website partners. And any time you go anywhere, they</p>	<p style="text-align: right;">Page 125</p> <p>1 A. The way it was explained to me by Tyson</p> <p>2 Chavarie is that TrustedForm captures a video snippet</p> <p>3 of the actual mouse movement. So when you're online,</p> <p>4 everything is being captured that you do online, even</p> <p>5 when you're pausing on a page or moving your mouse.</p> <p>6 So we were able to capture the mouse movement</p> <p>7 of people clicking on the consent form using</p> <p>8 TrustedForm.</p> <p>9 Q. And what's the TrustedForm certificate?</p> <p>10 A. That is -- that's the certificate that</p> <p>11 accompanies -- I'm guessing here -- I would assume</p> <p>12 that the certificate is the proof provided by</p> <p>13 TrustedForm that -- that interaction -- that thing</p> <p>14 actually happened. Whatever that was.</p> <p>15 Q. For the RVM campaigns that TMC conducted for</p> <p>16 Direct Energy, were the opt-ins supposed to be</p> <p>17 provided pursuant to this agreement?</p> <p>18 A. As far as I know, the agreement -- the DMI</p> <p>19 agreement that I negotiated -- yes, that was</p> <p>20 absolutely supposed to be part of it. It was opt-in</p> <p>21 leads with a TrustedForm, which is bullet 3.</p> <p>22 Q. And then it also mentions compliance</p> <p>23 purposes, that "the Trusted certificate will provide</p> <p>24 independent proof of consent of the opt-in by the</p> <p>25 consumer for compliance purposes."</p>

<p style="text-align: right;">Page 126</p> <p>1 Do you have an understanding as to what those</p> <p>2 compliance purposes are?</p> <p>3 A. It was my understanding that if anyone wanted</p> <p>4 proof of the opt-in, that would be the proof of the</p> <p>5 opt-in. It would be -- once again, if someone didn't</p> <p>6 remember opting in, we could provide -- you know --</p> <p>7 "Here's the website that you visited to opt-in" or</p> <p>8 "Here's your IP address that you opted in from," and</p> <p>9 that would satisfy any compliance issues, if asked.</p> <p>10 Q. Are you aware of TMC efforts to make sure</p> <p>11 that DMI would be able to provide that Trusted</p> <p>12 certificate?</p> <p>13 A. I believe that I saw Trusted certificates</p> <p>14 actually come through from TrustedForm. I believe</p> <p>15 that we did have corroboration that, yeah, it worked</p> <p>16 and we saw that.</p> <p>17 Q. You understand that TMC has an agreement with</p> <p>18 DMI to be able to provide the Trusted certificate for</p> <p>19 these opt-ins?</p> <p>20 A. No. TMC has an agreement with DMI to provide</p> <p>21 the opt-in leads, and we have an agreement with</p> <p>22 TrustedForm to provide the certificate.</p> <p>23 Q. Okay.</p> <p>24 A. Two different companies.</p> <p>25 Q. I appreciate that clarification.</p>	<p style="text-align: right;">Page 128</p> <p>1 A. That's what I negotiated; yes, sir.</p> <p>2 Q. If you can, turn to the next page with me.</p> <p>3 It's Direct Energy 000048.</p> <p>4 A. Yes.</p> <p>5 Q. You see where it says, "Payment"? It's in</p> <p>6 bold.</p> <p>7 A. Yeah.</p> <p>8 Q. And it says, "TMC will invoice Direct Energy</p> <p>9 for the leads and will pay DMI Partners directly."</p> <p>10 A. Correct.</p> <p>11 Q. Did that happen?</p> <p>12 A. To the best of my knowledge, yes.</p> <p>13 Q. You said to the best of your knowledge. What</p> <p>14 is your knowledge based on?</p> <p>15 A. At the time when this went into place, I was</p> <p>16 still involved in the day-to-day running. We were</p> <p>17 invoicing Direct Energy for leads from DMI and</p> <p>18 providing bill backup for it -- invoice backup for it.</p> <p>19 Q. Were you involved in that invoice process?</p> <p>20 A. No, sir.</p> <p>21 Q. But did you submit those invoices to Direct</p> <p>22 Energy?</p> <p>23 A. I don't think I directly submitted those -- I</p> <p>24 might have. I can't remember if I was the one who was</p> <p>25 submitting the invoices. I typically -- I'm not very</p>
<p style="text-align: right;">Page 127</p> <p>1 Do you have any understanding as to how</p> <p>2 TrustedForm goes about authenticating or verifying the</p> <p>3 opt-ins that DMI provided?</p> <p>4 A. I think they had an API set up.</p> <p>5 Q. What's an API?</p> <p>6 A. It's just a tunnel between computer systems</p> <p>7 that allows them to share information.</p> <p>8 So when DMI -- we engaged both DMI and</p> <p>9 Trusted at the same time to engineer the solution. So</p> <p>10 DMI and TrustedForm were connected at the IP level at</p> <p>11 the internet level. So anything that DMI was doing</p> <p>12 for us, Trusted had insight into it live.</p> <p>13 Q. What's your understanding or basis for that?</p> <p>14 A. That's how it was explained to me by Tyson.</p> <p>15 Q. Do you recall when Tyson explained that to</p> <p>16 you?</p> <p>17 A. Prior to the negotiation of the contract.</p> <p>18 Q. So --</p> <p>19 A. Because we discussed, "How are we going to</p> <p>20 engineer this?"</p> <p>21 Q. So, in your mind, as you're negotiating this</p> <p>22 contract with Direct Energy, you understood, hey, TMC</p> <p>23 is going to get -- be able to provide opt-in leads for</p> <p>24 Direct Energy and they're going to be able to be verified</p> <p>25 by this TrustedForm certificate?</p>	<p style="text-align: right;">Page 129</p> <p>1 involved in invoices, other than to look at them</p> <p>2 before they go out. I don't generate them, you know.</p> <p>3 I don't...</p> <p>4 Q. Fair enough. So you would have reviewed the</p> <p>5 invoices --</p> <p>6 A. I may have.</p> <p>7 Q. You say you may have. Would it --</p> <p>8 A. I just can't remember. This is four years</p> <p>9 ago.</p> <p>10 Q. And that's fair. That's completely fair.</p> <p>11 This is my only time to talk to you before trial, so I</p> <p>12 want to get your best recollection as we sit here</p> <p>13 today.</p> <p>14 A. Right.</p> <p>15 Q. Would it have been your practice to review</p> <p>16 the invoices before they got sent to Direct Energy?</p> <p>17 A. No, that wasn't one of my practices. That</p> <p>18 was typically something that was done by accounting.</p> <p>19 And you have to understand. At a certain</p> <p>20 point, most of the middle managers, like myself, we</p> <p>21 were kind of -- we were kind of pushed out of the</p> <p>22 day-to-day. Like, we didn't have P&L meetings, we</p> <p>23 didn't have manager meetings, we didn't have a lot of,</p> <p>24 you know, direction, you know, from our senior team</p> <p>25 about what was going on with the business. Are there</p>

<p style="text-align: right;">Page 130</p> <p>1 lawsuits? Are there AG complaints?</p> <p>2 We didn't even see the guys. Right? It's,</p> <p>3 like, I'm in another building; they're in another</p> <p>4 building.</p> <p>5 For the invoice, I know that this is the way</p> <p>6 that I structured it, and I do recall invoices being</p> <p>7 sent to Direct Energy to be compensated for the leads.</p> <p>8 Q. Do you have any reason to believe those</p> <p>9 invoices were at all inaccurate?</p> <p>10 A. I don't believe so. We went through an audit</p> <p>11 with an outside company that was ordered by Centrica,</p> <p>12 which is Direct Energy's parent company. So Centrica</p> <p>13 did a huge six-to-eight-month audit of all of our</p> <p>14 contracts, and there was no indication of any pay</p> <p>15 anomalies associated with anything with RVM.</p> <p>16 Q. Are you aware -- strike that. So let's get</p> <p>17 back to this scope of work right here.</p> <p>18 It says, "Leads are priced at 50 cents plus</p> <p>19 the TrustedForm fee."</p> <p>20 Do you see that?</p> <p>21 A. Yes, sir.</p> <p>22 Q. So what was -- what went into TMC's pricing</p> <p>23 for these leads?</p> <p>24 A. How did we reach a price of 50 cents?</p> <p>25 Q. Correct.</p>	<p style="text-align: right;">Page 132</p> <p>1 was very interested in making sure that the leads were</p> <p>2 solid leads.</p> <p>3 We're, like, "Well, how do we prove that the</p> <p>4 guy did the thing?" Right? So you get the</p> <p>5 TrustedForm so you can see the guy actually doing the</p> <p>6 thing.</p> <p>7 So, hopefully, that answers your question.</p> <p>8 Q. I think it does. I think it answers my</p> <p>9 question.</p> <p>10 But as you sit here today, you have no</p> <p>11 recollection as to what the cost per lead would've</p> <p>12 been from DMI?</p> <p>13 A. No. I don't know what the exact -- I can't</p> <p>14 recall that information, no.</p> <p>15 Q. You don't know if it was the exact same cost</p> <p>16 that you charged Direct Energy or something less?</p> <p>17 A. I know it wouldn't be something less.</p> <p>18 Q. You know it would not be something less?</p> <p>19 A. Yeah. We wouldn't have charged Direct Energy</p> <p>20 less than what we were being charged for the lead.</p> <p>21 Q. Fair. Would you charge Direct Energy more</p> <p>22 than what you were being charged for the lead?</p> <p>23 A. We may, yeah. I just don't know if we did</p> <p>24 that specifically in this instance.</p> <p>25 However, that's normal business -- yeah --</p>
<p style="text-align: right;">Page 131</p> <p>1 A. I believe that, you know, Tyson went out</p> <p>2 there and found the best rate. I would assume that,</p> <p>3 you know, they were looking at something that would</p> <p>4 provide what is required at the most economical rate.</p> <p>5 I would assume that's how they went by doing it.</p> <p>6 Q. Do you know if that 50 cents is the rate that</p> <p>7 DMI charged?</p> <p>8 A. You want to know if there was something added</p> <p>9 to the rate? I don't know.</p> <p>10 Q. Okay. You don't know if there was a markup?</p> <p>11 A. I don't know if there was a markup. I don't</p> <p>12 believe that there was a markup.</p> <p>13 Q. You may have already said this. You don't</p> <p>14 know what the DMI rate would've been?</p> <p>15 A. I didn't directly negotiate with DMI. So the</p> <p>16 DMI portion and the TrustedForm was brought on by</p> <p>17 Tyson.</p> <p>18 You have to remember, I'm just one guy. So</p> <p>19 I'm working with all these different departments to</p> <p>20 get a contract put together. So it's, like, "Hey, can</p> <p>21 we do this?" You go to IT. IT says, "Yeah, we can do</p> <p>22 it. This is how we can do it."</p> <p>23 Tyson came back with, "We can use DMI because</p> <p>24 we know them. We know the quality of their leads.</p> <p>25 And we can do this TrustedForm," because John Moran</p>	<p style="text-align: right;">Page 133</p> <p>1 you mark up stuff and make a profit. Right? So I</p> <p>2 would assume -- I would hope they did that.</p> <p>3 Q. And you said that John Moran was interested</p> <p>4 in this TrustedForm certificate?</p> <p>5 A. Yes, sir.</p> <p>6 Q. Is the TrustedForm certificate something you</p> <p>7 approached John about?</p> <p>8 A. I believe that's something that we brought to</p> <p>9 the table. I believe that's something that Tyson</p> <p>10 suggested to -- Direct Energy legal, at the time, they</p> <p>11 were asking questions about, "How do we prove it's an</p> <p>12 opt-in," and this is how we satisfied that ask.</p> <p>13 Q. So, in other words, it's another service that</p> <p>14 TMC was able to provide to Direct Energy?</p> <p>15 A. Sure, yeah.</p> <p>16 Q. And it was your intention that John Moran</p> <p>17 relied upon things like the TrustedForm certificate;</p> <p>18 right?</p> <p>19 A. Yes.</p> <p>20 Q. At the time, what was -- at the time this was</p> <p>21 executed, what was Tyson's position?</p> <p>22 A. CIO, I believe. He's had a lot of titles,</p> <p>23 but he's been the senior IT guy.</p> <p>24 Q. Okay. If you can, I'm going to go ahead and</p> <p>25 flip over to the next page, which is Direct Energy</p>

<p style="text-align: right;">Page 134</p> <p>1 000049.</p> <p>2 A. Yes, sir.</p> <p>3 Q. If you look at the second paragraph, it says,</p> <p>4 "Records of such opt-in, consumers, will be maintained</p> <p>5 and retained by TMC and/or its subcontractor, DMI</p> <p>6 Partners."</p> <p>7 Did I read that correctly?</p> <p>8 A. Yes, sir.</p> <p>9 Q. What was the arrangement -- or did TMC have</p> <p>10 an arrangement for someone to be able to retain these</p> <p>11 records?</p> <p>12 A. I believe that the standard practice that we</p> <p>13 have with most of our contracts -- the way that</p> <p>14 they're written -- is that we retain all data for at</p> <p>15 least two years. So that was my understanding of what</p> <p>16 our best practices were at the time, that we retained</p> <p>17 all of our data based on our contracts.</p> <p>18 Q. When you say "we," do you mean TMC?</p> <p>19 A. TMC.</p> <p>20 Q. So TMC would have a record of all of these</p> <p>21 opt-ins?</p> <p>22 A. DMI should as well.</p> <p>23 Q. So it was for both entities to maintain those</p> <p>24 records?</p> <p>25 A. Correct.</p>	<p style="text-align: right;">Page 136</p> <p>1 A. I have no knowledge of anything being</p> <p>2 destroyed, period.</p> <p>3 Q. That's all I want to know. I want to go to</p> <p>4 the first, second, third, fourth paragraph down. It</p> <p>5 says, "No outbound sales calls will be made by TMC or</p> <p>6 DMI Partners under this program to cellular phones, or</p> <p>7 phones on the FCC wireless/wireline ported list, using</p> <p>8 automated dialer equipment, or systems capable of</p> <p>9 storing telephone numbers or dialing those numbers,</p> <p>10 unless prior consent has been provided by a party who</p> <p>11 is age 21 years or older."</p> <p>12 Did I read that correctly?</p> <p>13 A. Yes, sir.</p> <p>14 Q. That's the term that you understand applied</p> <p>15 to the RVM campaign; right?</p> <p>16 A. Yes, sir.</p> <p>17 Q. So these things -- these opt-ins -- there had</p> <p>18 to be opt-ins for each call?</p> <p>19 A. Correct. In order for us to make an outbound</p> <p>20 call, we had to have an opted-in record to call.</p> <p>21 Q. You had to have prior written consent?</p> <p>22 A. Correct. A caveat to this is, I don't</p> <p>23 believe that we were making any outbound sales calls,</p> <p>24 so they were using RVM to generate inbound calls.</p> <p>25 Q. The RVMs, though, had to be placed with</p>
<p style="text-align: right;">Page 135</p> <p>1 Q. So the opt-in data should have been preserved</p> <p>2 by TMC; correct?</p> <p>3 A. Correct.</p> <p>4 Q. And also preserved by DMI; correct?</p> <p>5 A. Correct.</p> <p>6 Q. And you said the standard practice was to do</p> <p>7 it for two years?</p> <p>8 A. Yes.</p> <p>9 Q. Do you understand if Direct Energy had a much</p> <p>10 longer requirement than the two years?</p> <p>11 A. I don't recall.</p> <p>12 Q. Are you aware of TMC directing the</p> <p>13 destruction of any of its records?</p> <p>14 A. No, sir.</p> <p>15 Q. So the two-year period is the sort of just</p> <p>16 cutoff that they're holding onto this info?</p> <p>17 A. Generally, based on my experience with seeing</p> <p>18 other contracts.</p> <p>19 Q. And, certainly, Direct Energy never</p> <p>20 instructed TMC to destroy any documents?</p> <p>21 A. No, no. I'm not privy to any documents being</p> <p>22 destroyed or anything like that, sir.</p> <p>23 Q. You have no knowledge of my client</p> <p>24 instructing you or knowledge of anybody else at TMC to</p> <p>25 direct the destruction --</p>	<p style="text-align: right;">Page 137</p> <p>1 opt-ins?</p> <p>2 A. Right, absolutely.</p> <p>3 Q. The people who were contacted with RVMs, to</p> <p>4 your understanding --</p> <p>5 A. Opt-in.</p> <p>6 Q. -- had to have an opt-in?</p> <p>7 A. Yes, sir.</p> <p>8 Q. And Direct Energy never wavered from that;</p> <p>9 correct?</p> <p>10 A. Not to my understanding.</p> <p>11 Q. Direct Energy never modified this agreement</p> <p>12 and said, "We're willing to do something less than</p> <p>13 opt-ins," correct?</p> <p>14 A. I don't recall that happening.</p> <p>15 Q. You don't recall that happening? You would</p> <p>16 have been the point person for Direct Energy up until</p> <p>17 what time?</p> <p>18 A. Technically, about 2016 is when I</p> <p>19 disassociated from energy, but I was still on the</p> <p>20 e-mails through 2017 probably.</p> <p>21 Q. But going through 2017, you're not aware of</p> <p>22 an instance when John Moran, Madeline Nieves, or</p> <p>23 anybody else at Direct Energy said, "We don't need</p> <p>24 opt-ins for these RVMs anymore"?</p> <p>25 A. No, no.</p>

<p style="text-align: right;">Page 138</p> <p>1 Q. If you can, I want to go to the last 2 paragraph. It says, "It is the opt-in permission that 3 permits a subsequent outbound telesales call that is 4 the essential service being provided by TMC or DMI 5 Partners to Direct Energy under this scope of work or 6 SOW." 7 A. Yes. 8 Q. Did I read that correctly? 9 A. Yes. 10 Q. And you would agree with me, that was the 11 essential service that you were providing Direct 12 Energy? 13 A. That is what I negotiated with Direct Energy, 14 yes, sir. 15 Q. Right. That was the essential service? 16 A. That is the service that we were providing. 17 Q. Isn't it true that if you had non-opt-in 18 leads, let's just say, there are other types of leads 19 out there; correct? 20 A. Yes. 21 Q. What other kinds of leads are out there? 22 A. There's just leads that you buy -- Experian 23 sells leads. Everyone sales leads. Everyone sells 24 their data. 25 Q. But there are leads out there that are non --</p>	<p style="text-align: right;">Page 140</p> <p>1 Q. I'd like to go to what is Tab 1 in your 2 notebook. I don't believe this is actually marked. 3 If you can, put this on the front, if you will. Thank 4 you, sir. 5 (Exhibit 10 was marked for 6 identification.) 7 A. Don't thank me until you get your bill. 8 BY MR. THOMAS: 9 Q. You can send it to those guys. 10 Are you familiar with this document? 11 A. I am not. I'm familiar with the document. 12 I've seen it. I am not -- I was not involved in the 13 negotiation of this document. This was negotiated 14 between Brian Cain and George Lonabaugh. 15 Q. Have you seen this document before? 16 A. Yes, I have seen the document. I have not 17 read it. 18 Q. If you can, I want to go to Direct Energy 19 001392. 20 A. Can you say that again? 21 Q. 001392. 22 A. 1392? 23 Q. Correct. 24 A. Is that under Section 1? 25 Q. No. It's on the bottom. There's these Bates</p>
<p style="text-align: right;">Page 139</p> <p>1 A. That are non-opt-in. 2 Q. Again, let me finish my question. I'll give 3 you plenty of time to answer. 4 A. Sure. 5 Q. It's a very unnatural process. I apologize 6 for that. 7 The opt-in lead, though, is going to be more 8 expensive than the non-opt-in lead; right? 9 A. Yes. 10 Q. Because you actually have to get -- it's a 11 smaller niche or grouping of people; right? 12 A. Yes. There's more effort that goes into 13 securing that lead. 14 Q. Right. That's why you would pay something 15 like 50 cents per lead; right? 16 A. Correct. 17 Q. What would be the cost of a non-opt-in lead? 18 A. Depending on the volume of leads that you're 19 buying, maybe 2 cents. It depends. It really 20 depends, because there's -- in the digital side, if 21 we're talking about voice, as low as 2 cents. Maybe 22 less. 23 Q. You would agree with me that that's a pretty 24 significant difference on a per-lead basis; right? 25 A. Yes.</p>	<p style="text-align: right;">Page 141</p> <p>1 labels. Just go to 1392. 2 A. Oh -- 3 MR. McCUE: You're looking at a different 4 binder. 5 BY MR. THOMAS: 6 Q. Oh, I'm sorry. We have a different -- that's 7 why. Too many binders. 8 It's going to be Direct Energy 4. 9 A. Oh, okay. 10 Q. Direct Energy 000004 is actually page 3 of 11 the contract, and it's section 1.14. 12 A. So section 1? 13 Q. Yeah. Keep going. 14 A. Page 3? 15 Q. Yeah. Keep going. That's it. 16 A. Page 4? 17 Q. Page 4. Page 3, that's also Direct Energy 4. 18 A. Okay. 19 Q. On the bottom, it says -- I'm looking at the 20 very first column, all the way under 1.14 -- all the 21 way to the end of that column -- the second to last 22 line, it says, "Vendor is solely responsible for the 23 work product of each such third-party vendors, if 24 any." It goes on to the next page. 25 Did I read that correctly?</p>

<p style="text-align: right;">Page 142</p> <p>1 A. Yes, you did.</p> <p>2 Q. Are you aware of any other arrangement</p> <p>3 whereby TMC, as the vendor, did not agree to be</p> <p>4 responsible for its own third-party vendors?</p> <p>5 A. Not to my knowledge.</p> <p>6 Q. All right. Again, the last sentence of that</p> <p>7 section, it says, "Vendor shall inspect the work</p> <p>8 product of such third parties and promptly correct any</p> <p>9 deficiencies and maintain proper performance by such</p> <p>10 parties."</p> <p>11 Did I read that correctly?</p> <p>12 A. Yes, you did.</p> <p>13 Q. Are you aware of any other arrangement</p> <p>14 whereby TMC did not agree to inspect and verify the</p> <p>15 work and the work product and proper performance of</p> <p>16 its sub-vendors?</p> <p>17 A. You mean DE?</p> <p>18 Q. No. It says, "vendor shall inspect the</p> <p>19 work."</p> <p>20 A. Oh, okay.</p> <p>21 Q. Are you aware -- and the implication -- TMC</p> <p>22 agreed to inspect the work. Correct?</p> <p>23 A. Yeah.</p> <p>24 Q. TMC was responsible for inspecting the work</p> <p>25 of its own vendors; right?</p>	<p style="text-align: right;">Page 144</p> <p>1 Q. How is it that you're familiar with this</p> <p>2 document?</p> <p>3 A. I believe this is an example of what the</p> <p>4 customer would see when they're opting in -- I</p> <p>5 believe.</p> <p>6 Q. Do you know if Mr. Dickson visited this</p> <p>7 landing page?</p> <p>8 MR. McCUE: Objection.</p> <p>9 A. I have no idea.</p> <p>10 MR. THOMAS: What's your basis?</p> <p>11 MR. McCUE: Speculation.</p> <p>12 BY MR. THOMAS:</p> <p>13 Q. You have no knowledge as to whether or not</p> <p>14 Mr. Dickson visited this landing page?</p> <p>15 A. No, sir. I have no knowledge of any lead --</p> <p>16 right? That's not something that we checked in my</p> <p>17 department. Right? The operations team wouldn't be</p> <p>18 checking leads prior to calling them.</p> <p>19 Q. Okay. On this document -- this landing</p> <p>20 page -- do you participate in the creation of landing</p> <p>21 pages like this one?</p> <p>22 A. No. I provided information. I acted as a</p> <p>23 liaison between Direct Energy and TMC. That's</p> <p>24 basically my function. So I didn't -- I wasn't</p> <p>25 involved in the creation of anything, so much as the</p>
<p style="text-align: right;">Page 143</p> <p>1 A. The way this is written, yes, absolutely.</p> <p>2 Q. Right. And the way the other agreements were</p> <p>3 written. Is that fair?</p> <p>4 A. Yes.</p> <p>5 Q. Okay. Under this arrangement, TMC assumed</p> <p>6 responsibility and agreed to correct and inspect and</p> <p>7 maintain the work product of its own vendors; correct?</p> <p>8 A. That's what the agreement says.</p> <p>9 Q. And Direct Energy relied on that; right?</p> <p>10 A. Yes.</p> <p>11 Q. In your opinion, that's something reasonable</p> <p>12 for a customer to be able to rely upon; right?</p> <p>13 A. Yeah.</p> <p>14 Q. You're the telemarketer; right?</p> <p>15 A. Correct.</p> <p>16 Q. I want to go to -- I'm going to show you what</p> <p>17 I'm going to mark as Direct Energy -- it's just going</p> <p>18 to be Exhibit 11.</p> <p>19 (Exhibit 11 was marked for</p> <p>20 identification.)</p> <p>21 BY MR. THOMAS:</p> <p>22 Q. This is a document that was produced by TMC</p> <p>23 in this litigation.</p> <p>24 Are you familiar with this document?</p> <p>25 A. Yes, I believe so.</p>	<p style="text-align: right;">Page 145</p> <p>1 communication of things.</p> <p>2 So any ad design or static design, that would</p> <p>3 be done by Tyson and the IT team.</p> <p>4 Q. Who was it that would create the landing</p> <p>5 page?</p> <p>6 A. DMI created the landing page. So we got the</p> <p>7 language approved by Direct Energy, and then that</p> <p>8 language was given to DMI for their ads, whether it's</p> <p>9 a static ad or a video ad or whatever it would be.</p> <p>10 Q. So what's the language that you're referring</p> <p>11 to?</p> <p>12 A. That would be the approved language for the</p> <p>13 offer, as well as the approved language for the</p> <p>14 consent. We don't want to put out an offer there that</p> <p>15 says, "You can get the Nest for \$5," when the actual</p> <p>16 rate is 20 bucks or whatever.</p> <p>17 Q. That's the product that Direct Energy is</p> <p>18 offering?</p> <p>19 A. Correct.</p> <p>20 Q. And Direct Energy is responsible for the</p> <p>21 product that they're offering?</p> <p>22 A. Correct.</p> <p>23 Q. Paid-for research, that's not anything</p> <p>24 affiliated with Direct Energy; right?</p> <p>25 A. I think that may be DMI.</p>

<p style="text-align: right;">Page 146</p> <p>1 Q. That's not a -- to your knowledge, that's not</p> <p>2 a Direct Energy landing page; right?</p> <p>3 A. No.</p> <p>4 Q. Paid-for research is not something that</p> <p>5 Direct Energy does; right?</p> <p>6 A. Not to my knowledge.</p> <p>7 Q. And you guys went to DMI to come up with</p> <p>8 these landing pages; right?</p> <p>9 A. Yes. TMC engaged DMI.</p> <p>10 Q. Okay. Do you recall, as the liaison, any</p> <p>11 conversations going back between Direct Energy and TMC</p> <p>12 and DMI about these landing pages?</p> <p>13 A. No.</p> <p>14 Q. That was something that TMC worked on</p> <p>15 exclusively with DMI; right?</p> <p>16 A. Correct. John Moran and Madeline Nieves</p> <p>17 communicated what the client expectation was from</p> <p>18 procurement and legal. Then Tyson did the direct</p> <p>19 negotiation with DMI and TrustedForm. Then I</p> <p>20 communicated what we did.</p> <p>21 Q. Fair enough. But there were no drafts that</p> <p>22 went back and forth; correct?</p> <p>23 A. Not to my knowledge, no.</p> <p>24 Q. Direct Energy wasn't marking up paid-for</p> <p>25 research and saying, "Let's call it something else,"</p>	<p style="text-align: right;">Page 148</p> <p>1 in a DNC report that we sent weekly, or a flash or</p> <p>2 something like that. I'm not quite sure what the</p> <p>3 reporting is on the back end. But you either asked</p> <p>4 for it or it was included in a DNC report.</p> <p>5 Q. But that would have to be someone who</p> <p>6 actually decided, hey, I would like to not receive</p> <p>7 these calls?</p> <p>8 A. Correct.</p> <p>9 Q. As a matter of course, all of this lead</p> <p>10 information is not getting transported API --</p> <p>11 A. Not to my knowledge.</p> <p>12 Q. Hold on one second -- API'd over to Direct</p> <p>13 Energy. Right?</p> <p>14 A. Correct.</p> <p>15 Q. Direct Energy relied upon TMC to use this</p> <p>16 data to place the telemarketing calls; correct?</p> <p>17 A. Yes.</p> <p>18 Q. The list that TMC used for the RVMs, that</p> <p>19 data came from DMI; correct?</p> <p>20 A. Yes, sir.</p> <p>21 Q. And possibly, you think, Silverman, depending</p> <p>22 upon the timing; right?</p> <p>23 A. Yes, sir.</p> <p>24 MR. McCUE: Objection.</p> <p>25 BY MR. THOMAS:</p>
<p style="text-align: right;">Page 147</p> <p>1 right?</p> <p>2 A. You guys were not involved with any creative</p> <p>3 ad designs or anything like that.</p> <p>4 Q. Do you know, if someone fills out this</p> <p>5 landing page, the data that's on that landing page --</p> <p>6 for example, the phone, the address, the city, the</p> <p>7 state, the ZIP code -- where does that go?</p> <p>8 A. I would assume it goes into a database</p> <p>9 somewhere. First, it would be DMI's database. If</p> <p>10 there's an API, it would instantaneously enter our</p> <p>11 database as well.</p> <p>12 Q. I'm sorry. I think your answer is, API is --</p> <p>13 A. It's just a way to tunnel systems together,</p> <p>14 to connect different computers together.</p> <p>15 Q. So this would go to a DMI database?</p> <p>16 A. And, simultaneously, ours.</p> <p>17 Q. And go simultaneously to DT?</p> <p>18 A. Correct.</p> <p>19 Q. Would that data then go to Direct Energy?</p> <p>20 A. I believe in the form of, like, DNC reports</p> <p>21 and things -- not directly.</p> <p>22 Q. No. To your understanding, this data would</p> <p>23 only go to Direct Energy if someone called and</p> <p>24 complained; right?</p> <p>25 A. Correct. Or it may have been included, like,</p>	<p style="text-align: right;">Page 149</p> <p>1 Q. During the period of the RVM campaign, TMC</p> <p>2 was sourcing its opt-ins from one entity at a time; is</p> <p>3 that right?</p> <p>4 A. I have no idea, sir. When I was involved, it</p> <p>5 was DMI.</p> <p>6 Q. Fair enough. Direct Energy had no other</p> <p>7 involvement in those lists; right?</p> <p>8 A. When I was involved, no.</p> <p>9 Q. When you were involved, Direct Energy didn't</p> <p>10 get copies of the list in advance of any outbound</p> <p>11 campaign or the RVM campaign; right?</p> <p>12 A. No.</p> <p>13 Q. To the best of your knowledge, that didn't</p> <p>14 change after you took a different position?</p> <p>15 A. I can't speak to the quality of the leads</p> <p>16 once Silverman was involved. I don't know.</p> <p>17 Q. Because you weren't involved with that?</p> <p>18 A. I wasn't involved.</p> <p>19 Q. Your participation ended with DMI?</p> <p>20 A. Correct.</p> <p>21 Q. Do you know when Silverman got involved?</p> <p>22 A. Sometime around 2017.</p> <p>23 Q. Any idea of the year when they got involved?</p> <p>24 A. Excuse me?</p> <p>25 Q. Do you have any idea when specifically in</p>

<p style="text-align: right;">Page 150</p> <p>1 2017?</p> <p>2 A. From viewing the earlier document that we</p> <p>3 covered, it was somewhere around March.</p> <p>4 Q. But that knowledge is based upon the document</p> <p>5 that you saw today?</p> <p>6 A. Yeah. It's just been three years. You know,</p> <p>7 I wasn't involved with Silverman and all that stuff.</p> <p>8 I just forwarded the paperwork and that was it. I</p> <p>9 don't know what happened -- I know DMI. I can speak</p> <p>10 about DMI.</p> <p>11 Q. Did TMC approach Direct Energy about using</p> <p>12 ringless voicemails?</p> <p>13 A. No. I believe we did.</p> <p>14 Q. That's what I'm saying. TMC approached</p> <p>15 Direct Energy; right?</p> <p>16 A. Correct.</p> <p>17 Q. This was another service that TMC was</p> <p>18 offering to provide to Direct Energy; right?</p> <p>19 A. Sure.</p> <p>20 Q. And it provided that same service to other</p> <p>21 clients?</p> <p>22 A. Yes, I believe so.</p> <p>23 Q. Direct Energy was not the only person that</p> <p>24 TMC was engaged in this -- in ringless voicemails --</p> <p>25 correct?</p>	<p style="text-align: right;">Page 152</p> <p>1 as a subcontractor?</p> <p>2 A. I have no idea.</p> <p>3 Q. Did TMC participate in the development of the</p> <p>4 software to place ringless voicemails?</p> <p>5 A. I don't believe so.</p> <p>6 Q. To your knowledge, Direct Energy didn't</p> <p>7 either; right?</p> <p>8 A. Not to my knowledge.</p> <p>9 Q. Right. To your knowledge, that technology is</p> <p>10 owned by JDI or whomever that vendor is; right?</p> <p>11 A. Yes, sir.</p> <p>12 Q. Does TMC place a -- have a license to use</p> <p>13 that ringless voicemail technology?</p> <p>14 A. I have no idea. I don't know if it's per</p> <p>15 call, per minute, per -- I have no idea how that is</p> <p>16 structured.</p> <p>17 Q. To your knowledge, Direct Energy doesn't have</p> <p>18 a license to use that; right?</p> <p>19 A. I have no idea. I would assume not.</p> <p>20 Q. Have you ever seen this technology?</p> <p>21 A. No, I haven't.</p> <p>22 Q. Do you know where it's at?</p> <p>23 A. I have no idea.</p> <p>24 Q. Certainly, at least when you were working</p> <p>25 with DMI --</p>
<p style="text-align: right;">Page 151</p> <p>1 A. I believe we had other clients, yes.</p> <p>2 Q. You had other energy service clients; right?</p> <p>3 A. I believe so.</p> <p>4 Q. Do you have any idea how many clients were</p> <p>5 using RVMs?</p> <p>6 A. No, sir.</p> <p>7 Q. Did you use RVMs in the political tier of</p> <p>8 business?</p> <p>9 A. I don't believe so, but -- I don't think it's</p> <p>10 even covered under political. Political has its own</p> <p>11 laws.</p> <p>12 Q. I understand that. But did you use RVMs on</p> <p>13 any political campaign?</p> <p>14 A. Not to my knowledge.</p> <p>15 Q. Does TMC own the technology to place ringless</p> <p>16 voicemails?</p> <p>17 A. Not to my knowledge.</p> <p>18 Q. Okay. It has to go contract with somebody</p> <p>19 else to use that technology?</p> <p>20 A. I believe so.</p> <p>21 Q. Do you know who they contracted with to use</p> <p>22 the RVM technology?</p> <p>23 A. I recall JDI is one company. There may have</p> <p>24 been another. I don't know the name.</p> <p>25 Q. Do you recall if Direct Energy approved JDI</p>	<p style="text-align: right;">Page 153</p> <p>1 A. With DMI, I -- I was confident with DMI</p> <p>2 because I could see it. I saw the TrustedForms and</p> <p>3 stuff like that. After that, I have no idea.</p> <p>4 Q. Are you aware of anybody at Direct Energy</p> <p>5 ever going and seeing that technology?</p> <p>6 A. No.</p> <p>7 Q. Are you aware of anybody at TMC ever going</p> <p>8 and seeing that technology?</p> <p>9 A. Maybe Tyson and those guys. I mean, it's --</p> <p>10 I don't know if it's, like, a thing. Right? It's all</p> <p>11 these different parts of the internet that are being</p> <p>12 pulled together to do a thing.</p> <p>13 So I don't know if there's, like, a place --</p> <p>14 one place -- that you can go to to see what RVM is</p> <p>15 because there's just so many different components to</p> <p>16 it. But that would be stuff that would be vetted by</p> <p>17 our IT team.</p> <p>18 Q. Again, you're guessing on this; right?</p> <p>19 A. Yes, sir.</p> <p>20 Q. If we can, I want to go to Tab 85. This is</p> <p>21 Exhibit 7. I'm sorry. Tab 86. I want to go to</p> <p>22 Direct Energy 009022, which is going to be the next</p> <p>23 page.</p> <p>24 Do you see where it says, "Direct Energy</p> <p>25 program"?</p>

<p style="text-align: right;">Page 154</p> <p>1 A. Yes, sir.</p> <p>2 Q. You see, below that, where it says,</p> <p>3 "Regarding the program DE wants to roll out, I need to</p> <p>4 understand the exact details of the proposed RVM</p> <p>5 campaign, especially given the advice provided in my</p> <p>6 e-mail of 30, June 2017 regarding RVM campaigns."</p> <p>7 Did I read that correctly?</p> <p>8 A. Yes, sir.</p> <p>9 Q. Is it your understanding that the bullets</p> <p>10 below this paragraph are about the proposed campaign?</p> <p>11 Correct?</p> <p>12 A. Yes.</p> <p>13 Q. So where it says, "Does DE have prior written</p> <p>14 consent from the person we hope to contact via RVM?"</p> <p>15 "No" -- that's in regards to the proposed campaign?</p> <p>16 A. Correct. Because, at the time, we do not</p> <p>17 have permission to contact. We're trying to get a</p> <p>18 campaign -- to build a campaign where we do have</p> <p>19 permission.</p> <p>20 So, at the time, yeah -- do we have written</p> <p>21 consent from anyone to contact? No. We're proposing</p> <p>22 a solution to that whereby, using opt-in leads, we</p> <p>23 would.</p> <p>24 Q. Because, on the outbound telemarketing, you</p> <p>25 were using opt-ins at this time?</p>	<p style="text-align: right;">Page 156</p> <p>1 A. I don't know the answer to that.</p> <p>2 Specifically to wireless leads, I don't know the</p> <p>3 answer to that.</p> <p>4 Q. You don't know if Direct Energy ever engaged</p> <p>5 in a campaign with wireless leads; right?</p> <p>6 A. To my recollection, no.</p> <p>7 Q. You were not the point person at that time?</p> <p>8 A. No, I was not.</p> <p>9 Q. To the best of your knowledge, they never</p> <p>10 did?</p> <p>11 A. I don't believe so. I don't know. I'm not</p> <p>12 comfortable answering that question. I just don't</p> <p>13 know.</p> <p>14 Q. You don't know?</p> <p>15 A. I don't know.</p> <p>16 Q. TMC has employees that are dedicated to</p> <p>17 compliance; correct?</p> <p>18 A. Yes.</p> <p>19 Q. So there's individuals within the TMC</p> <p>20 organization that are responsible for compliance?</p> <p>21 A. Yes.</p> <p>22 Q. Compliance is something that's important to</p> <p>23 TMC?</p> <p>24 A. Yes.</p> <p>25 Q. Compliance for all of the campaigns; correct?</p>
<p style="text-align: right;">Page 155</p> <p>1 A. On outbound?</p> <p>2 Q. Correct.</p> <p>3 A. We were not using --</p> <p>4 Q. Let me rephrase that. On the RVM campaign,</p> <p>5 you were using opt-ins?</p> <p>6 A. Yes.</p> <p>7 Q. When you're involved and engaged in</p> <p>8 contacting cellular phones, you're using opt-ins;</p> <p>9 correct?</p> <p>10 A. Yes, sir.</p> <p>11 Q. This proposal, to your knowledge, Direct</p> <p>12 Energy never agreed to go forward with this campaign;</p> <p>13 correct?</p> <p>14 A. I don't recall. I don't know.</p> <p>15 Q. You don't have a recollection as to Direct</p> <p>16 Energy saying, "Let's do this campaign." Right?</p> <p>17 A. Which specific campaign are we talking about?</p> <p>18 Q. The one that's referenced in this e-mail,</p> <p>19 Exhibit 7.</p> <p>20 A. I believe, if it's referencing Silverman, it</p> <p>21 was my understanding that we did have permission to</p> <p>22 use Silverman.</p> <p>23 Q. To use Silverman; right?</p> <p>24 A. Correct.</p> <p>25 Q. But this is about the use of wireless leads.</p>	<p style="text-align: right;">Page 157</p> <p>1 A. Correct.</p> <p>2 Q. I mean, to the best of your knowledge, in</p> <p>3 your interactions with Direct Energy, compliance was</p> <p>4 important to Direct Energy as well; right?</p> <p>5 A. Absolutely. On all the campaigns that I've</p> <p>6 managed, PCI compliance has been huge, so, you know, I</p> <p>7 run my campaigns aboveboard.</p> <p>8 Q. Right. You're unaware -- you have no</p> <p>9 knowledge of Direct Energy ever looking past any type</p> <p>10 of TMC violation of the TCPA; right?</p> <p>11 A. No. We tracked errors and complaints on a</p> <p>12 daily basis with DE.</p> <p>13 MR. THOMAS: Okay. Let's go ahead and</p> <p>14 take a five-minute break. I just want to see</p> <p>15 what else I've got and maybe try to organize</p> <p>16 a little bit earlier.</p> <p>17 THE VIDEOGRAPHER: We are going off the</p> <p>18 record. The time is 1:52.</p> <p>19 (Brief recess.)</p> <p>20 THE VIDEOGRAPHER: We are back on the</p> <p>21 record. The time is 1:59.</p> <p>22 BY MR. THOMAS:</p> <p>23 Q. All right, Mr. Correia. I am showing you --</p> <p>24 one second.</p> <p>25 MR. THOMAS: Matt, that green light</p>


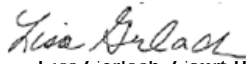
<p style="text-align: right;">Page 158</p> <p>1 e-mail you had that you marked as an exhibit, 2 I don't want to remark it. 3 MR. McCUE: It's 31. 4 BY MR. THOMAS: 5 Q. If you'll turn to Tab 31 -- this is 6 Exhibit 4 -- this is an e-mail from John Moran, and I 7 believe you're listed on the "to" line. Correct? 8 A. Yeah. To George and myself. 9 Q. It says, "Team, we've been given the green 10 light to go forward with ringless voice message 11 program to opt-in leads only." 12 Then we go to the second paragraph and it 13 says, "Essentially, this campaign will allow you to 14 drop a voice message to every opt-in lead currently in 15 your recent files." 16 Correct? 17 A. Correct. 18 Q. As of May -- May 15th of 2017 -- the campaign 19 and the RVM that Direct Energy green-lighted, this 20 concerned opt-ins; right? 21 A. Correct. 22 (Exhibit 12 was marked for 23 identification.) 24 BY MR. THOMAS: 25 Q. Mr. Correia, I'm showing you what's been</p>	<p style="text-align: right;">Page 160</p> <p>1 Q. -- you e-mail John Moran; is that correct? 2 A. Correct. 3 Q. I want to go to the third paragraph in this. 4 "Moving forward, customers who opt in between 5 9:00 a.m. and 9:00 p.m., their time zone, will be 6 contacted via RVM. Any opt-in lead received after 7 hours will be contacted the following day at 8 9:00 a.m." 9 Did I read that correctly? 10 A. Yes. 11 Q. Again, the direction that TMC had was 12 dropping RVMs to opt-in customers; right? 13 A. Yes, sir. 14 Q. As of May 31st, 2017, still no change in that 15 direction; right? 16 A. As far as I know, there was never any change 17 in that direction. 18 Q. Fair. That's what I want to understand. 19 A. Yeah. 20 (Exhibit 14 was marked for 21 identification.) 22 BY MR. THOMAS: 23 Q. I'm going to show you what was marked as 24 Exhibit 14. This is Direct Energy 002491. This is an 25 e-mail from you to John Moran in November of 2017 --</p>
<p style="text-align: right;">Page 159</p> <p>1 marked as Exhibit 12. This is Direct Energy 006932. 2 Again, this is an e-mail from John Moran to you, 3 May 22nd, 2017; correct? 4 A. Correct. 5 Q. He says, "Thank you." 6 Your e-mail to John was, "We're looking to 7 launch RVM this week. We wanted to tie it to the 8 relaunch of opt-in data." 9 Did I read that correctly? 10 A. Correct. 11 Q. Again, the RVM was tied to the opt-in data 12 that TMC was getting through one of its vendors; 13 right? 14 A. Correct. 15 Q. During this time, do you recall if it was DMI 16 or Silverman? 17 A. 2017? It may have been Silverman at that 18 time. 19 (Exhibit 13 was marked for 20 identification.) 21 BY MR. McCUE: 22 Q. I'm showing you now what is Exhibit 13. This 23 is Direct Energy 1641. 24 May 31st, 2017 -- 25 A. Right.</p>	<p style="text-align: right;">Page 161</p> <p>1 November 15th, 2017. 2 You mention, "revamping and overhauling the 3 entire lead sourcing strategy to focus primarily on 4 the following:" Bullet one, "HIVE and sweepstakes 5 targeted opt-in data for multiple lead vendors." 6 Bullet two, "SMS to drive inbound." Three, "OB to opt 7 in." Four, "RVM as a last effort pass on opt-in 8 data." 9 Did I read that correctly? 10 A. Yes. 11 Q. The RVM, that would still be -- the RVMs in 12 November were still being dropped on opt-in data as 13 far as you know; correct? 14 A. Correct. This was about the time that the 15 company was, I think, exploring drip platforms. So 16 they were trying to play around with a strategy to 17 have an omnichannel approach to marketing, where we 18 would send the text, the text would generate an 19 inbound. If that doesn't work, then we would -- the 20 second part of the drip marketing strategy would be an 21 outbound call. And the third thing would be, as a 22 last-ditch effort, is to RVM blast as to the opt-in 23 leads. 24 Q. So the drip is really sort of a three-phased 25 approach; is that fair?</p>

<p style="text-align: right;">Page 162</p> <p>1 A. It can be more than three, but it's a</p> <p>2 multiphase approach to keeping your leads intact.</p> <p>3 Because, as we all know, it's, like, very expensive,</p> <p>4 so we don't want to turn our leads into DNCs. So the</p> <p>5 way that we strategize to do that is by not</p> <p>6 over-penetrating the leads. You don't want to call</p> <p>7 the same customer a million times and upset them.</p> <p>8 So this was a marketing strategy where we</p> <p>9 could have multiple touches with the same customer</p> <p>10 without upsetting them.</p> <p>11 Q. So the phrase "teledrip," that refers to the</p> <p>12 strategy, not necessarily the technology; right?</p> <p>13 A. Correct.</p> <p>14 Q. Because I've seen references to teledrip.</p> <p>15 A. It's more of the strategy. It's not a</p> <p>16 platform. You can use different platforms within the</p> <p>17 teledrip. You can use, like, constant contact for an</p> <p>18 e-mail. You can use something else for text. So it's</p> <p>19 just a strategy.</p> <p>20 Q. Based on your understanding of the agreements</p> <p>21 for TMC to place ringless voicemails, we established</p> <p>22 it was always supposed to be with opt-ins; correct?</p> <p>23 A. Yes, sir.</p> <p>24 Q. Your understanding would be, if it did it</p> <p>25 without opt-ins, that would be contrary to Direct</p>	<p style="text-align: right;">Page 164</p> <p>1 Q. And Silverman is providing -- is essentially</p> <p>2 the new provider of opt-in leads after DMI?</p> <p>3 A. Yes. That's what I was saying. We probably</p> <p>4 engaged Silverman late 2016. If this is dated March,</p> <p>5 it makes sense that we were talking to them at the end</p> <p>6 of 2016, the beginning of 2017.</p> <p>7 Q. So for calls taking place, say, the beginning</p> <p>8 of 2017 going through 2018, DMI has really nothing to</p> <p>9 do with any of those calls; right?</p> <p>10 A. For 2017 --</p> <p>11 Q. 2017 through 2018.</p> <p>12 A. Based on this, yeah, anything from 2017,</p> <p>13 looks like it's Silverman.</p> <p>14 Q. Okay. Are you aware of when Direct Energy</p> <p>15 entered into a contract approving Silverman to give</p> <p>16 opt-in leads? Are you aware of when that happened?</p> <p>17 A. I would assume it's sometime around March.</p> <p>18 Q. So the contract will speak for itself. But,</p> <p>19 essentially, you would be looking to these contracts</p> <p>20 as giving Silverman or DMI specific guidance about</p> <p>21 what an opt-in looks like; right?</p> <p>22 A. Yes, sir.</p> <p>23 Q. There is a lot of reference in the e-mails to</p> <p>24 stopping the ringless voicemail campaign and</p> <p>25 restarting it.</p>
<p style="text-align: right;">Page 163</p> <p>1 Energy's instructions; correct?</p> <p>2 A. And contrary to what I negotiated, yes, sir.</p> <p>3 MR. THOMAS: Fair enough. Pass the</p> <p>4 witness.</p> <p>5 MR. McCUE: Sure. Just a few follow-ups.</p> <p>6 REDIRECT EXAMINATION</p> <p>7 BY MR. McCUE:</p> <p>8 Q. We talked a lot today about DMI.</p> <p>9 When did your working relationship with DMI</p> <p>10 end chronologically?</p> <p>11 A. Probably at the time that Silverman came up</p> <p>12 or shortly before Silverman came up, I would believe.</p> <p>13 Q. What timeframe was that?</p> <p>14 A. I would have to think, somewhere around the</p> <p>15 end of 2016, the beginning of 2017.</p> <p>16 Q. So, earlier, we talked about -- you can look</p> <p>17 at Exhibit 13 in your binder -- let me rephrase it.</p> <p>18 Tab 13. Second page, Tab 13. Earlier, we talked</p> <p>19 about this draft statement of work.</p> <p>20 Would you agree with me that this is from</p> <p>21 March of 2017?</p> <p>22 A. Yes.</p> <p>23 Q. So the relationship with Silverman might have</p> <p>24 actually been started earlier than that?</p> <p>25 A. It may have, yes.</p>	<p style="text-align: right;">Page 165</p> <p>1 Are you familiar with that general context?</p> <p>2 A. Yes.</p> <p>3 Q. What happened? Why did it start? Why did it</p> <p>4 stop? Why did it restart?</p> <p>5 A. I think it was around cost.</p> <p>6 Q. Okay. Can you give me a little more detail?</p> <p>7 A. It costs a lot to produce an opt-in lead.</p> <p>8 And based on the contact rate and the conversion of</p> <p>9 those leads, it was driving up our cost to acquire it</p> <p>10 above our burden rate. So we went back to Direct</p> <p>11 Energy to renegotiate.</p> <p>12 Q. Okay. And the restart, is that --</p> <p>13 chronologically -- is that somewhat consistent with</p> <p>14 now turning to Silverman to run the program?</p> <p>15 A. I believe so.</p> <p>16 Q. Okay. So Direct Energy authorized TMC to</p> <p>17 restart their ringless voicemail campaign on new</p> <p>18 negotiated terms with Silverman?</p> <p>19 A. Yeah. I was not involved with the</p> <p>20 negotiation of those Silverman terms.</p> <p>21 Q. But your general understanding is that they</p> <p>22 were able to get the lead costs negotiated down</p> <p>23 somewhat?</p> <p>24 A. It was my understanding that they were</p> <p>25 providing the same quality of a lead for a cheaper</p>

<p style="text-align: right;">Page 166</p> <p>1 rate, yes.</p> <p>2 Q. Who would be the person with the lead</p> <p>3 knowledge in terms of these dealings with Silverman?</p> <p>4 A. That would be Tyson, Robert, Joe Yates, and</p> <p>5 George. So leads are procured by IT. Typically, in</p> <p>6 this -- with this marketing initiative, that was all</p> <p>7 handled specifically by Tyson Chavarie.</p> <p>8 Q. Okay.</p> <p>9 A. He had a director of IT, Joe Yates, that</p> <p>10 would handle the day-to-day lead purchasing, lead</p> <p>11 allocation, I guess you would -- whatever -- managing</p> <p>12 the actual systems and the contacts and stuff like</p> <p>13 that. That was all done by that department.</p> <p>14 Q. You were asked some questions about other</p> <p>15 energy clients for TMC. I want to kind of direct your</p> <p>16 attention to that.</p> <p>17 When TMC does a campaign, is the campaign</p> <p>18 exclusive per client?</p> <p>19 A. Yes, sir.</p> <p>20 Q. So any campaign that is done for Direct</p> <p>21 Energy, every call in that campaign will be for Direct</p> <p>22 Energy?</p> <p>23 A. Yes, sir.</p> <p>24 Q. We saw in the opt-in contract the specific</p> <p>25 example of the Direct Energy language -- the Direct</p>	<p style="text-align: right;">Page 168</p> <p>1 opting in to multiple parties instead of just one.</p> <p>2 Q. I understand.</p> <p>3 A. They're co-registering for multiple offers.</p> <p>4 Q. Can you tell me what co-registration means in</p> <p>5 your mind? What do those words --</p> <p>6 A. Co-registration, in my mind, means the</p> <p>7 consumer -- if I'm going online -- when I'm opting in,</p> <p>8 I'm opting in to be marketed by more than one person.</p> <p>9 Q. Okay. Is the exhibit to the opt-in</p> <p>10 contract -- is the consumer consenting to receive</p> <p>11 calls from more than one client or just from Direct</p> <p>12 Energy?</p> <p>13 A. I think it depends on the lead source, I</p> <p>14 guess, but -- and the way that the agreement is</p> <p>15 written -- the terms and conditions are written.</p> <p>16 I believe, with DMI, it was specific to</p> <p>17 Direct Energy. I'm not quite sure how it was</p> <p>18 structured with Silverman. But when I negotiated the</p> <p>19 contract, I had to get approval for the ad copy and</p> <p>20 the picture that I was using and everything.</p> <p>21 Q. You were asked a few questions about kind of</p> <p>22 the minutia of Direct Energy involved with TMC's</p> <p>23 business. Just want to follow up on a few of those.</p> <p>24 You were asked -- we talked about dedicated</p> <p>25 agents.</p>
<p style="text-align: right;">Page 167</p> <p>1 Energy opt-in?</p> <p>2 A. Yes, sir.</p> <p>3 Q. But then there was also discussion about</p> <p>4 co-reg leads.</p> <p>5 So those exhibits to the opt-in contract</p> <p>6 where they specifically refer to Direct Energy, are</p> <p>7 those co-reg leads in your mind?</p> <p>8 A. Yeah, they're all co-reg leads. They're all</p> <p>9 opt-in leads, co-reg leads. It's all the same thing</p> <p>10 to me. I don't know if anyone else has a definition</p> <p>11 that would divide them. But, in my mind, an opt-in</p> <p>12 lead -- a co-reg opt-in lead -- it's all the same</p> <p>13 thing. It's a lead where the customer is giving us</p> <p>14 permission to contact them for 90 days.</p> <p>15 Q. I thought you said earlier that a co-reg lead</p> <p>16 is a lead that the consumer is purportedly giving</p> <p>17 consent to receive calls from a whole host of people.</p> <p>18 A. They're both opt-in leads. There's different</p> <p>19 qualities to your opt-in lead. There's an opt-in lead</p> <p>20 where you're giving direct consent to one company,</p> <p>21 which is not a co-reg. It's an opt-in to one company.</p> <p>22 And that's written in the terms and conditions, the</p> <p>23 language of the opt-in.</p> <p>24 Then you have a co-registration opt-in, which</p> <p>25 is still an opt-in lead; however, the customer is</p>	<p style="text-align: right;">Page 169</p> <p>1 Did Direct Energy ever request for dedicated</p> <p>2 agents from TMC?</p> <p>3 A. Not on energy, but on other campaigns, yes.</p> <p>4 Q. Do you have knowledge about specifics for</p> <p>5 energy or is that not your space?</p> <p>6 A. While I was working on the energy campaign, I</p> <p>7 don't recall any requirements for dedicated agents. I</p> <p>8 mean, how are you defining dedicated agents?</p> <p>9 Q. I'm really just following up on your</p> <p>10 testimony. It seemed to me that you were saying that</p> <p>11 a dedicated agent will only work for one campaign,</p> <p>12 even if the phone is not ringing.</p> <p>13 A. Yeah. So we have that with Direct Energy or</p> <p>14 what is now Authority Brands. It's just -- it's</p> <p>15 difficult to talk about something -- we have such a</p> <p>16 mix of campaigns that we do.</p> <p>17 So, yeah, for Direct Energy, we had campaigns</p> <p>18 where agents were not dedicated to them. Then we did</p> <p>19 have campaigns where agents were dedicated to Direct</p> <p>20 Energy.</p> <p>21 Q. Okay. Then, also, there's also some general</p> <p>22 question about hiring and Direct Energy's involvement.</p> <p>23 Did Direct Energy give TMC specific</p> <p>24 instructions about who they wanted hired for Direct</p> <p>25 Energy campaigns?</p>

<p style="text-align: right;">Page 170</p> <p>1 A. Not specifically who, but, you know, basic 2 hiring guidelines. 3 Q. What were those guidelines? What are some 4 examples? 5 A. Wow -- I can't recall off the top of my head. 6 But some of the standard things that we hear from our 7 clients are typing a certain amount of words per 8 minute, being able to multitask, being able to speak 9 effectively and communicate effectively, accent 10 neutrality. Things of that nature. 11 Q. And your memory is that Direct Energy did 12 provide those types of hiring guidelines to TMC? 13 A. I don't know. I don't know. Once again, you 14 have to understand that, if we're talking about 15 energy -- I'm not sure if we're talking about home 16 services -- the answer is yes. When I launched Direct 17 Energy, I launched home services. 18 I kind of was doing energy to help out. And 19 whenever the company needed something, I would jump in 20 and do whatever was asked of me. 21 But on the home services side, yeah, Direct 22 Energy definitely set out the criteria for people that 23 are being hired. 24 Q. Does TMC still work with Silverman? 25 A. I have no idea. I would say no. TMC, today,</p>	<p style="text-align: right;">Page 172</p> <p>1 A. I believe so. That's the way I interpret 2 that language. 3 Q. Okay. What I'm trying to understand -- 4 there's language in it that says, "if the services 5 will continue past the trial period upon execution of 6 a written agreement between the parties." 7 Do you see that language? 8 A. Where are you -- 9 Q. About two-thirds down under "term." 10 A. Under "term"? Yes. 11 Q. I'll just read the language again. "The 12 parties will negotiate in good faith and determine if 13 the services will continue past the trial period upon 14 execution of a written agreement." 15 Did I read that properly? 16 A. Yes. 17 Q. I just want to make sure -- from your 18 perspective, you're not aware of any other written 19 agreement between TMC and DMI, other than what we've 20 been talking about? 21 A. Correct. 22 Q. All right. Was Silverman always involved in 23 ringless voicemail? 24 A. I don't know where Silverman came from. I 25 never worked with Silverman before. I've never worked</p>
<p style="text-align: right;">Page 171</p> <p>1 as I know it, does not work with Silverman at all. 2 Q. Do you know why? 3 A. Because of this type of litigation, as well 4 as the fact that we no longer are in the energy space 5 as of right now. 6 Q. Sure. Do you have any factual basis to think 7 that Silverman did not provide truthful opt-in leads 8 to TMC? 9 A. I have nothing factual. 10 Q. Turning back to Tab 5, which we can say which 11 exhibit it is for the record. I guess we never marked 12 it. 13 MR. McCUE: Tab 5, could we mark it as 14 the next exhibit? We have already marked it. 15 BY MR. McCUE: 16 Q. If you can go back to Tab 4? We talked a lot 17 earlier about the contract between DMI and TMC. 18 Do you recall that testimony? 19 A. Yes, sir. 20 Q. I believe your testimony was -- the term 21 refers to a 30-day calendar day trial period. 22 Right? Do you see that? 23 A. Yes, sir. 24 Q. It's your testimony that you think this 25 contract extended past that; is that right?</p>	<p style="text-align: right;">Page 173</p> <p>1 with Silverman. I wouldn't work with Silverman. 2 Q. How come? 3 A. Simply because of what's going on right now. 4 I mean, I've learned through this process that 5 Silverman may not have been providing what we were 6 looking for. This is what I hear. 7 Q. Aside from the actual lawsuit, has anyone 8 else given you information that Silverman wasn't 9 giving you the leads you thought you were getting? 10 A. No. 11 MR. McCUE: Nothing further. 12 RE CROSS-EXAMINATION 13 BY MR. THOMAS: 14 Q. I have a follow-up. If you can turn with me 15 to Tab 70? I'm going to mark this as 15. 16 (Exhibit 15 was marked for 17 identification.) 18 BY MR. THOMAS 19 Q. It's an e-mail from you to John Moran. This 20 is December 12th, 2017. The subject matter of this 21 is, "New proposed SOW, Silverman lead sourcing." 22 Did I read that correctly? 23 A. Yeah. 24 Q. In it you tell John, "Thank you for the 25 follow-up on this. This is huge for us. We will</p>

<p style="text-align: right;">Page 174</p> <p>1 start flowing new leads into the campaign this week 2 and will work with the vendor to target the leads for 3 better performance." 4 Would this have been the new lead scope of 5 work or referencing the new lead scope of work with 6 Silverman? If you can, take a minute and look through 7 the e-mail. I know there's a long chain. 8 A. Yeah. 9 Q. This would've been the new scope of work for 10 Silverman? 11 A. Yeah, I believe so. 12 Q. Okay. 13 A. It looks that way. 14 Q. If I can, I want to go flip to -- 15 A. My dates may be off. Maybe it wasn't in 16 March. Maybe that's when we were negotiating it. 17 Honestly, I can't recall when the cutover date was 18 from one vendor to another one. 19 Q. If you can, I want to flip back to Tab 13. I 20 think this was marked as Exhibit 3. 21 A. Statement of work addendum? 22 Q. Yes. Direct Energy 001379. 23 Is it possible that this statement of work 24 was contracting with Silverman to provide the RVM 25 technology and not necessarily the leads?</p>	<p style="text-align: right;">Page 176</p> <p>1 A. It appears so. 2 Q. There's 14 pages of invoices from SE 02 3 through SE 016, generally? 4 A. Yes, sir. 5 Q. What is your understanding of what these 6 invoices depict? 7 A. I've never seen these invoices before. They 8 appear to depict leads -- purchasing of leads. 9 Q. Okay. And this is in June of 2017 -- would 10 be the first one; correct? 11 A. Correct. 12 Q. It says, "Wholesale pricing tier, 1,250,000 13 RVM drop package." 14 What do you think that means? 15 A. It means they probably dropped 1,250,000 16 messages. 17 Q. So, at this point, we're in June of 2017. 18 Silverman would be doing both the ringless calling and 19 using their own leads. 20 Would that be your understanding? 21 MR. THOMAS: Objection. I think that 22 mischaracterizes his testimony. 23 A. I have no idea. 24 BY MR. McCUE: 25 Q. Having looked at this document?</p>
<p style="text-align: right;">Page 175</p> <p>1 A. Possibly, possibly. I'd have to defer to, 2 like, Tyson and those guys. It's possible. 3 MR. THOMAS: That's fair. Pass the 4 witness. 5 FURTHER REDIRECT EXAMINATION 6 BY MR. McCUE: 7 Q. Let me refer you to Tab 79 of the binder. 8 We'll mark this as the next exhibit. 9 (Exhibit 16 was marked for 10 identification.) 11 A. Is this an invoice? 12 BY MR. McCUE: 13 Q. A series of invoices. Take a spin through 14 that tab. For the record, it starts at SE 000002. SE 15 is Silverman. 16 THE VIDEOGRAPHER: Counsel, we have five 17 minutes remaining on this media. 18 MR. McCUE: Okay. 19 BY MR. McCUE: 20 Q. I'm just going to ask you some general 21 questions. Let me know when you're ready. 22 A. Yeah. 23 Q. Do you agree with me in general that these 24 are invoices between Silverman and TMC that begin 25 June 5th, 2017 and go through September 11th, 2017?</p>	<p style="text-align: right;">Page 177</p> <p>1 A. Looking at this document, I don't even know 2 if these were leads that were procured for Direct 3 Energy or someone else. Like I said, I wasn't 4 involved in Silverman Enterprises, and I have no idea 5 how many leads were being purchased, where leads were 6 being purchased from. 7 BY MR. McCUE: 8 Q. In your mind, when TMC starts working with 9 Silverman, are they using Silverman both for leads and 10 for ringless voicemail, to do both the dial and get 11 the opt-ins? 12 A. I believe it was for leads and the platform. 13 I believe it was both. 14 MR. McCUE: Thank you. Nothing further. 15 MR. THOMAS: Nothing further. 16 MR. McCUE: All right. Thank you. 17 THE VIDEOGRAPHER: We're off the record 18 at 2:27 p.m., and this concludes today's 19 testimony given by Larry Correia. The total 20 number of media units used was three. 21 THE REPORTER: The transcript was 22 ordered. Do you want a copy? 23 MR. THOMAS: Yes. We don't need hard 24 copies. Just an e-tran. 25 MR. McCUE: Same for us. We'll handle</p>

<p style="text-align: right;">Page 178</p> <p>1 the read and sign.</p> <p>2 THE REPORTER: Okay. Do you want the</p> <p>3 exhibits on the portal only?</p> <p>4 (Response in the positive.)</p> <p>5 THE REPORTER: Thank you.</p> <p>6 (The reading and signing of the</p> <p>7 transcript were not waived, and these</p> <p>8 proceedings concluded at 2:27 p.m.)</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 180</p> <p>1 CERTIFICATE OF REPORTER</p> <p>2</p> <p>3 STATE OF FLORIDA</p> <p>4 COUNTY OF ORANGE</p> <p>5</p> <p>6 I, Lisa Gerlach, Court Reporter, do hereby</p> <p>7 certify that I was authorized to and did</p> <p>8 stenographically report the foregoing deposition; and</p> <p>9 that the transcript is a true and correct</p> <p>10 transcription of the testimony given by the witness.</p> <p>11 I further certify that I am not a relative,</p> <p>12 employee, attorney or counsel of any of the parties,</p> <p>13 nor am I a relative or employee of any of the parties'</p> <p>14 attorney or counsel connected with the action, nor am</p> <p>15 I financially interested in the action.</p> <p>16 Dated this 25th day of October, 2019.</p> <p>17</p> <p>18 </p> <p>19 Lisa Gerlach, Court Reporter</p> <p>20</p> <p>21 The foregoing certification of this transcript does</p> <p>22 not apply to any reproduction of the same by any means</p> <p>23 unless under the direct control and/or discretion of</p> <p>24 the certifying reporter.</p> <p>25</p>
<p style="text-align: right;">Page 179</p> <p>1</p> <p>2 CERTIFICATE OF OATH</p> <p>3</p> <p>4 STATE OF FLORIDA</p> <p>5 COUNTY OF ORANGE</p> <p>6</p> <p>7</p> <p>8 I, Lisa Gerlach, the undersigned Notary</p> <p>9 Public, in and for the State of Florida, hereby</p> <p>10 certify that Larry Correia personally appeared before</p> <p>11 me and was duly sworn.</p> <p>12</p> <p>13 WITNESS my hand and official seal this</p> <p>14 25th day of October, 2019.</p> <p>15</p> <p>16 </p> <p>17 Lisa Gerlach, Court Reporter</p> <p>18 Commission #GG023652</p> <p>19 Expires 9/8/2020</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 181</p> <p>1 Veritext Legal Solutions</p> <p>2 1100 Superior Ave</p> <p>3 Suite 1820</p> <p>4 Cleveland, Ohio 44114</p> <p>5 Phone: 216-523-1313</p> <p>6</p> <p>7 November 8, 2019</p> <p>8</p> <p>9 To: Mr. Matthew P. McCue</p> <p>10</p> <p>11 Case Name: Dickson, Matthew v. Direct Energy, LP, et al.</p> <p>12</p> <p>13 Veritext Reference Number: 3532360</p> <p>14</p> <p>15 Witness: Larry Correia Deposition Date: 10/25/2019</p> <p>16</p> <p>17 Dear Sir/Madam:</p> <p>18</p> <p>19 Enclosed please find a deposition transcript. Please have the</p> <p>20</p> <p>21 witness review the transcript and note any changes or corrections on</p> <p>22</p> <p>23 the included errata sheet, indicating the page, line number, change,</p> <p>24</p> <p>25 and the reason for the change. Have the witness' signature</p> <p>notarized and forward the completed page(s) back to us at the</p> <p>production address shown above, or email to production-</p> <p>midwest@veritext.com.</p> <p>If the errata is not returned within thirty days of your receipt of</p> <p>this letter, the reading and signing will be deemed waived.</p> <p>Sincerely,</p> <p>Production Department</p> <p>25 NO NOTARY REQUIRED IN CA</p>

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1 DEPOSITION REVIEW
CERTIFICATION OF WITNESS

2

3 ASSIGNMENT REFERENCE NO: 3532360
CASE NAME: Dickson, Matthew v. Direct Energy, LP, et al.
DATE OF DEPOSITION: 10/25/2019

4 WITNESS' NAME: Larry Correia
5 In accordance with the Rules of Civil
Procedure, I have read the entire transcript of
6 my testimony or it has been read to me.
7 I have made no changes to the testimony
as transcribed by the court reporter.

8

9 Date _____ Larry Correia
10 Sworn to and subscribed before me, a
Notary Public in and for the State and County,
11 the referenced witness did personally appear
and acknowledge that:

12 They have read the transcript;
13 They signed the foregoing Sworn
Statement; and
14 Their execution of this Statement is of
their free act and deed.

15 I have affixed my name and official seal
16 this _____ day of _____, 20____.

17 _____
18 Notary Public
19 _____
Commission Expiration Date

20
21
22
23
24
25

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1 ERRATA SHEET
VERITEXT LEGAL SOLUTIONS MIDWEST

2 ASSIGNMENT NO: 3532360

3 PAGE/LINE(S) / CHANGE /REASON

4 _____
5 _____
6 _____
7 _____
8 _____
9 _____
10 _____
11 _____
12 _____
13 _____
14 _____
15 _____
16 _____
17 _____
18 _____
19 _____

20 Date _____ Larry Correia
21 SUBSCRIBED AND SWORN TO BEFORE ME THIS _____
22 DAY OF _____, 20____.

23 _____
Notary Public

24 _____
Commission Expiration Date

25

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1 DEPOSITION REVIEW
CERTIFICATION OF WITNESS

2

3 ASSIGNMENT REFERENCE NO: 3532360
CASE NAME: Dickson, Matthew v. Direct Energy, LP, et al.
DATE OF DEPOSITION: 10/25/2019

4 WITNESS' NAME: Larry Correia
5 In accordance with the Rules of Civil
Procedure, I have read the entire transcript of
6 my testimony or it has been read to me.
7 I have listed my changes on the attached
Errata Sheet, listing page and line numbers as
8 well as the reason(s) for the change(s).
9 I request that these changes be entered
as part of the record of my testimony.

10

11 I have executed the Errata Sheet, as well
as this Certificate, and request and authorize
that both be appended to the transcript of my
12 testimony and be incorporated therein.

13 _____
Date _____ Larry Correia

14 Sworn to and subscribed before me, a
15 Notary Public in and for the State and County,
the referenced witness did personally appear
16 and acknowledge that:

17 They have read the transcript;
They have listed all of their corrections
18 in the appended Errata Sheet;
They signed the foregoing Sworn
19 Statement; and
Their execution of this Statement is of
20 their free act and deed.

21 I have affixed my name and official seal
22 this _____ day of _____, 20____.

23 _____
Notary Public

24 _____
Commission Expiration Date

25